

v. 2916

No. 14562

United States
Court of Appeals
for the Ninth Circuit.

LIBBY, McNEIL & LIBBY, a Corporation, and
YAKUTAT & SOUTHERN RAILWAY, a
Corporation,

Appellants,

vs.

THE CITY OF YAKUTAT, ALASKA,

Appellee.

Transcript of Record
In Two Volumes

Volume II
(Pages 333 to 483)

Appeal from the District Court
for the District of Alaska,
Division Number One.

FILED

JAN 26 1955

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United States Court of Appeals
for the Ninth Circuit
No. 13455

LIBBY, McNEILL & LIBBY, a Corporation, and
YAKUTAT AND SOUTHERN RAILWAY,
a Corporation,

Appellants,

vs.

CITY OF YAKUTAT, ALASKA,

Appellee.

MANDATE

United States of America—ss.

The President of the United States of America

To the Honorable, the Judges of the United States
District Court for the Territory of Alaska, Di-
vision Number One:

Greeting:

Whereas, lately in the United States District Court for the Territory of Alaska, Division No. One, before you or some of you, in a cause between City of Yakutat, Plaintiff, and Libby, McNeill & Libby, a corporation, and Yakutat and Southern Railway, a corporation, Defendants, No. 6302-A, a judgment was duly filed and entered on the 6th day of March, 1952, which said judgment is of record in said cause in the office of the clerk of the said District Court, to which record reference is hereby made, and the same is hereby expressly made a part hereof,

And Whereas, the said Libby, McNeill & Libby, a corporation, and Yakutat & Southern Railway, a

Corporation, appealed to this court as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals for the Ninth Circuit by virtue of an appeal agreeably to the Act of Congress, in such cases made and provided, fully and at large appears.

And Whereas, on the 22nd day of April, in the year of our Lord, one thousand nine hundred and fifty-three, the said cause came on to be heard before the said United States Court of Appeals for the Ninth Circuit, on the said transcript of record, and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the order of the said District Court in this Cause be, and hereby is, reversed, with costs in favor of the appellants and against the appellee.

You, Therefore, Are Hereby Commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Fred M. Vinson, Chief Justice of the United States, the nineteenth day of August, in the year of our Lord one thousand nine hundred and fifty-three.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk, United States Court of Appeals for the
Ninth Circuit.

Costs—

Clerk	\$ 25.00
Printing record	694.94
Attorney	
<hr/>	
Total	\$719.94

In the District Court for the Territory of Alaska,
Division Number One, at Juneau

Civil Action No. 6581-A

In the Matter of:

THE DELINQUENT AND SUPPLEMENTAL
DELINQUENT TAX ROLL OF REAL AND
PERSONAL PROPERTY FOR THE CITY
OF YAKUTAT, ALASKA, FOR THE
YEARS 1948 AND 1949.

LIBBY, McNEILL & LIBBY, a Corporation, and
YAKUTAT & SOUTHERN RAILWAY, a
Corporation,

Objectors.

MOTION TO FILE MANDATE AND FOR
JUDGMENT ON MANDATE

Objectors move that the mandate, heretofore
issued on August 19, 1953, by the United States
Court of Appeals for the Ninth Circuit on appeal
to it by the Objectors from the Order of Sale made
and entered by this Court on April 25, 1952, be filed

and that judgment on said mandate be entered herein.

Dated at Juneau, Alaska, October 7, 1953.

ROBERTSON, MONAGLE &
EASTBAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

Notice

To the City of Yakutat, Alaska, and Its Attorney,
Wm. L. Paul, Jr.:

You are hereby notified that Objectors will present the foregoing motion with the attached judgment on mandate to the above-entitled Court at Juneau upon its first call of the motion calendar upon its return to Juneau, and will request that said mandate be filed and said judgment on the mandate be entered.

Dated at Juneau, Alaska, October 7, 1953.

ROBERTSON, MONAGLE &
EASTAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

Affidavit of mail attached.

[Endorsed]: Filed October 8, 1953.

[Title of District Court and Cause.]

JUDGMENT ON MANDATE

Whereas, the United States Court of Appeals for the Ninth Circuit heretofore on August 19, 1953, issued its mandate reversing that certain Order of Sale made herein, by this Court on April 25, 1952, and assessing costs of \$719.94, consisting of Clerk's fees, \$25.00, and printing record, \$694.94 against the City of Yakutat, Alaska, an Alaskan municipal corporation,

Now, Therefore, on Objectors' motion, it is hereby ordered, adjudged and decreed that said mandate be filed by the Clerk of this Court and that this Court's Order of Sale made and entered herein on April 25, 1952, be and it is hereby vacated and set aside, and that Objectors Libby, McNeill & Libby and the Yakutat & Southern Railway have judgment against the City of Yakutat, Alaska, for \$719.94, costs assessed by the Appellate Court, and for their costs incurred in this Court.

Done in open Court this 8th day of May, 1954.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed May 8, 1954.

[Title of District Court and Cause.]

OBJECTIONS TO FORM OF JUDGMENT

Applicant objects to the form of judgment tendered by objectors for the reason that since the opinion of the Court of Appeals and in conformity therewith, applicant has applied the funds paid by objectors to the payment of their personal property taxes and to their real property taxes, both including penalty and interest, thereby exhausting any liability due on personal property taxes, penalty and interest, and partially paying their real property taxes, as had theretofore been directed by objectors; and therefore there is a balance due on the real property taxes which should be determined by this Court in favor of applicant.

/s/ WILLIAM L. PAUL, JR.,
Applicant's Attorney.

Received May 6, 1954.

[Title of District Court and Cause.]

MOTION FOR TRIAL

Applicant moves that this matter be set down for trial for 2:00 p.m. May 11, 1954, or on the alternative that the evidence of the witness, Dorothy Henry, a resident of the City of Yakutat, and essential to the trial of this cause be preserved. The evidence expected to be adduced from her is that she is City Clerk and can identify the assessment and

tax roll of applicant showing a segregation of personal and real property of objectors.

/s/ WILLIAM L. PAUL, JR.,
Applicant's Attorney.

To Robertson, Monagle & Eastaugh, Attorneys for
Objectors.

Please take notice that applicant will call up the foregoing motion before the Court at 10 a.m. May 11, 1954, at its courtroom in the Federal Building, at Juneau, Alaska.

May 10, 1954.

/s/ WILLIAM L. PAUL, JR.,
Applicant's Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed May 10, 1954.

[Title of District Court and Cause.]

MOTION TO STRIKE

Applicant moves that the following portions of the printed record be stricken on the ground that the issues of fact sought by objectors to be proven therein are not issues upon which objectors theretofore had presented evidence to applicant's Board of Equalization, but had only made claims thereon, and therefore objectors had not exhausted their administrative remedy:

Pages 113 through 145 of the printed record, being:

Applicant's interrogatories filed June 21, 1949, and the objectors' answers thereto filed August 9, 1950; August 9, 1950; December 20, 1950.

Applicant's interrogatories filed December 20, 1950; and Objectors' answers dated December 20, 1950, and January 16, 1951.

And for the further ground that such evidence is an attempt to show a compromise out of Court.

May 12, 1954.

/s/ WILLIAM L. PAUL, JR.,
Applicant's Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed May 12, 1954.

[Title of District Court and Cause.]

ORDER DENYING APPLICANT'S
OBJECTIONS TO JUDGMENT ON MANDATE

Applicant's Objections to form of judgment on mandate presented by Objectors, after argument of counsel the Court took the matter under advisement, and now being fully advised in the premises:

It Is Ordered that said objections be and they are hereby overruled and that the costs taxed by the Appellate Court against the City Applicant cannot be applied or credited by the Applicant upon the

taxes, personal or realty, penalty and interest, or any part thereof, which Applicant claims are due to it from the Objectors.

Done in open Court this 12th day of May, 1954,
nunc pro tunc May 8, 1954.

/s/ GEORGE W. FOLTA,
District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed May 13, 1954.

[Title of District Court and Cause.]

OBJECTORS' OBJECTIONS TO NOTICE,
ALSO TO INTERROGATORIES, OF TAK-
ING THE DEPOSITION OF DOROTHY
HENRY

Objectors object to, and move to suppress, Applicant City's notice of the taking of the deposition of Dorothy Henry and to the written interrogatories proposed to be propounded to her upon the ground that the above-entitled Court has no jurisdiction to set, by its order of May 11, 1954, or otherwise, this proceeding for trial on June 24, 1954, or at any other time, and is without jurisdiction in this proceeding to permit further evidence to be adduced by the City through said witness, Dorothy Henry, or any other witness or in any other manner or to admit or receive any further evidence herein, and is without jurisdiction in this proceeding to do any

act or thing other than to obey the mandate and decision of the United States Court of Appeals for the Ninth Circuit, heretofore respectively issued and rendered herein, and that said order of May 11, 1954, violates, disregards, and disobeys said mandate and decision of said Appellate Court and said notice and interrogatories to said Dorothy Henry and her proposed deposition disregard and disobey said mandate and decision of said Appellate Court, and said interrogatories and the evidence sought to be elicited thereby are irrelevant, immaterial, and incompetent, and seek to amend, supplement, modify or qualify the delinquent tax roll which is the basis of this proceeding and which was before this Court when it made its Order of Sale on April 25, 1952, and before said Appellate Court when it rendered its said decision and issued its said mandate, and said evidence was before said Appellate Court when it rendered its said decision and issued its said mandate.

Dated at Juneau, Alaska, May 21, 1954.

ROBERTSON, MONAGLE &
EASTAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed May 21, 1954.

[Title of District Court and Cause.]

NOTICE OF TAKING OF DEPOSITION ON
WRITTEN INTERROGATORIES

Please take notice that at 10 a.m. on May 24, 1954, at U. S. Commissioner's Office, Yakutat, Alaska, the above-named Applicant, City of Yakutat, will take the deposition of Dorothy Henry upon written interrogatories pursuant to the Rules of Civil Procedure, before U. S. Commissioner, a notary public, or before some officer authorized by law to take depositions. A copy of the direct interrogatories is attached. You are invited to propound cross-interrogatories.

Dated May 12, 1954.

/s/ WILLIAM L. PAUL, JR.,
Attorney for Applicant.

Copy received May 12, 1954.

Attorney for Objectors.

[Title of District Court and Cause.]

DEPOSITION OF DOROTHY HENRY

Be It Remembered, that on May 24, 1954, in Yakutat, Alaska, before me, ex officio a notary public in and for Territory of Alaska, duly commissioned and sworn, personally appeared the witness

hereinafter named, as a witness called herein on behalf of applicant, and gave answer to the interrogatories and cross-interrogatories hereto attached, as follows:

Direct Interrogatories to Be Propounded by Applicant to the Witness, Dorothy Henry, May 24, 1954.

1. State your name and official position with the City of Yakutat.

Answer: My name is Dorothy Henry. I am the city clerk for Yakutat.

2. Are you the person having official custody of the assessment rolls of the City of Yakutat?

Answer: Yes.

3. Attached hereto is a photostatic copy. Can you identify it? If so, please identify it.

Answer: The photostatic copy is a true copy of the assessment rolls of the City of Yakutat for the years inscribed thereon relating to the personal and real property of Libby, McNeill and Libby, and Yakutat and Southern Railway at Yakutat, Alaska. Combined with the assessment rolls is the tax roll showing the computation of tax at the appropriate millage rate.

/s/ DOROTHY B. HENRY.

(Signature of Witness.)

CITY OF YAKUTAT

Payment

**CITY OF YAKUTAT
TAX AND ASSESSMENT ROLL No 5**

1948	Owner's	Valuation Assessor's	Board	Tax Rate M	Date	Payment
Land						
Improvements						
Personal						
TOTAL						
OWNER	Libby McNeill & Libby, Inc. ADDRESS: 1300 1st St. S. SEASIDE, CALIF.					
1949						
Land						
Improvements						
Personal						
TOTAL						
OWNER	ADDRESS: 1300 1st St. S. SEASIDE, CALIF.					
1950 - 51						
Land						
Improvements						
Personal						
TOTAL						
OWNER	ADDRESS: 1300 1st St. S. SEASIDE, CALIF.					
1951						
Land						
Improvements						
Personal						
TOTAL						
OWNER	ADDRESS: 1300 1st St. S. SEASIDE, CALIF.					

EXHIBIT NO. 2
RECEIVED IN EVIDENCE
MAY 10 1954
CLERK
IN CHARGE

United States of America,
Territory of Alaska—ss.

I, the undersigned, a notary public duly appointed, commissioned and sworn to act in and for the above-entitled jurisdiction, do hereby certify that on the appearance date first above written and at the place thereof, before me personally appeared the hereinabove witness, as a witness hereinabove stated;

That thereupon said witness was sworn by me to tell the truth, the whole truth and nothing but the truth, and a true answer make to all interrogatories and cross-interrogatories propounded to said witness; that thereupon the foregoing interrogatories and cross-interrogatories were propounded to him by William L. Paul, Jr., as attorney for applicant, City of Yakutat, and
.....; and to which he then and there made his respective answers as set forth after each of said interrogatories; that thereafter he caused said answers to be reduced to writing, whereupon said witness read said interrogatories and his answers in my presence and made such corrections thereto as appear therein, and thereupon signed and swore said answers were true answers to said respective interrogatories;

That I further hereby certify that said answers to all interrogatories are a true record and transcript of the testimony given by said witness; that I am not an attorney or agent of any of the parties to the above-entitled suit or interested directly or

indirectly in the matter in controversy and am not financially interested in said action or the outcome thereof.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at the place in this certificate first mentioned on May 24, 1954.

[Seal] /s/ R. A. WELSH,
U. S. Commissioner for Precinct of Yakutat, Alaska,
and Ex Officio Notary Public for the Territory
of Alaska.

[Endorsed]: Filed May 25, 1954.

[Title of District Court and Cause.]

NOTICE OF FILING OF DEPOSITION
OF DOROTHY HENRY

To the Above-Named Objectors and Their Attorney,
R. E. Robertson:

You are hereby notified that the deposition of Dorothy Henry, on written interrogatories taken on behalf of applicant, City of Yakutat, on May 24, 1954, in Yakutat, Alaska, before U. S. Commissioner, has today been filed with the Clerk in the above cause.

Dated May 25, 1954.

/s/ WILLIAM L. PAUL, JR.,
Attorney for Applicant.

Receipt of copy acknowledged.

[Endorsed]: Filed May 28, 1954.

In the District Court for the District of Alaska,
Division Number One, at Juneau

No. 6581-A

In the Matter of
The Delinquent Tax Roll of Real and Personal
Property for the City of Yakutat, Alaska, for
the years 1948 and 1949.

LIBBY, McNEILL & LIBBY, a Corporation, and
YAKUTAT & SOUTHERN RAILWAY, a
Corporation,

Objectors.

SUPPLEMENTAL TRANSCRIPT

[Title of District Court and Cause.]

ORDER SHORTENING TIME

This Court being about to depart from this Division sooner than applicant's motion to have this matter set for trial could regularly be heard, thus causing unnecessary delay in the Court's consideration of said motion and matter, it is

Ordered that the time within which to hear said motion be and hereby is shortened to 10 a.m. May 11, 1954.

It Is Further Ordered that said motion be and

hereby is allowed, and the time of trial of said matter is fixed at 10 a.m. June 24, 1954.

Done at Juneau, Alaska, this May 11, 1954.

GEO. W. FOLTA,
District Judge.

Copy received May 11, 1954, 4:10 p.m.

R. E. ROBERTSON,
Of Attorneys for Objectors.

[Title of District Court and Cause.]

MINUTE ENTRY OF JUNE 29, 1954

As entered in Journal No. 21, Page 475. This pertains to both No. 6581-A and No. 6734-A.

At this time these matters came before the court for hearing on Objections to Order of Sale in the above-entitled cases. William L. Paul, Jr., was present in behalf of Plaintiffs; R. E. Robertson for Objectors. After argument the Court directed that in Cause No. 6581-A evidence heretofore introduced in support of objections to the Tax Roll be considered in support of the objections to the present tax roll. Thereafter the Court signed Order of Sale in each case.

It was stipulated that the amount of the supersedeas bond in Cause No. 6581-A may be fixed at \$4,000 and in Cause No. 6734-A at \$6,000.00.

MINUTE ENTRY OF JULY 28, 1954

As entered in Journal No. 21, Page 496. This pertains to both Nos. 6581-A and 6734-A.

Objectors' Motion, on June 30, 1954, to amend or alter the Minute Order entered in Cause No. 6581-A on June 29, 1954, was allowed upon applicant's consent but subject to applicant's non-admission of any objectors' legal conclusions stated in this Objections in support of their Motion, dated June 23, 1954, to Strike Applicant's Amended Duplicate Delinquent Tax Roll for 1949, dated June 23, 1954, and without admitting the legal validity of those Objections.

Objectors' Motions for New Trial in both causes Nos. 6581-A and 6734-A, after argument of counsel, were denied.

Applicant's Application to withdraw its original municipal records on deposit with the Clerk of the Court was allowed upon applicant's agreement that it would promptly return into the custody of the Clerk such of those records as the objectors might request.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

United States of America,
Territory of Alaska,
Division Number One—ss.

I, J. W. Leivers, Clerk of the District Court for the District of Alaska, Division Number One, do hereby certify that the hereto attached documents are true and correct copies of the Order Shortening Time of May 11, 1954, Minute Order of June 29, 1954, and Minute Order of June 28, 1954, in the above cause, the originals whereof were heretofore transmitted by me to the Honorable U. S. Court of Appeals for the Ninth Circuit in San Francisco and have not yet been returned to me, and are certified by me as a Supplemental Transcript at the request of Objectors Libby, McNeill & Libby and Yakutat & Southern Railway's counsel for inclusion in the record on appeal herein.

In Witness Whereof I have hereunto set my hand and affixed the seal of the above-entitled Court in Juneau, Alaska, this 25th day of January, 1955.

[Seal] /s/ J. W. LEIVERS,

Clerk of the District Court.

[Title of District Court and Cause.]

OBJECTORS' MOTION TO VACATE ORDER
ENTITLED "ORDER SHORTENING
TIME"

Objectors move to vacate and set aside that certain order, entered herein on May 11, 1954, entitled "Order Shortening Time," wherein, among other things, the trial of this proceeding was "fixed at 10 a.m. June 24, 1954," for the following, inter alia, grounds:

1. This Court is without jurisdiction to set this proceeding for trial on June 24, 1954, or for any other time.

2. This Court is without jurisdiction to admit, receive, or consider, or to permit the adducement of, any further evidence herein.

3. This Court is without jurisdiction herein to do any act or thing other than to obey the mandate of the United States Court of Appeals for the Ninth Circuit which was issued on August 19, 1953, which commanded this Court to do nothing other than to cause said mandate to be filed herein, to enter this Court's judgment on said mandate, and to tax costs against the applicant.

4. That the mandate of said Appellate Court, issued on August 19, 1953, and its decision by its opinion of July 8, 1953, and its order, entered on August 13, 1953, denying the Applicant's petition for rehearing are res judicata of the issues of this

proceeding and estop and bar the applicant from a further trial herein.

5. That this Court's judgment on the mandate, entered herein on May 8, 1954, is final, from which no appeal is allowable, and no further proceedings can be had herein other than to tax costs in this Court against Applicant and to enforce the costs, both of said Appellate Court and this Court, against Applicant.

6. That this Court's judgment on mandate, entered herein on May 8, 1954, is *res judicata* and estops and bars the Applicant from a further trial herein.

7. That this Court's said order of May 11, 1954, disregards and ignores said Appellate Court's mandate and decision and order denying Applicant's petition for rehearing before the Appellate Court, and a further trial herein will be in disregard of and in disobedience to **them**.

8. That this Court is without jurisdiction herein to grant the Applicant any further relief whatsoever, and that all of the issues of this proceeding have been decided adversely against the Applicant, i.e.: as to the tax year 1948 by this Court's decision and opinion filed herein on March 6, 1952, and its order of sale of April 25, 1952, and as to the tax year 1949 by the Appellate Court's decision and opinion, mandate, and order denying Applicant's petition for rehearing, whereupon this Court here-

tofore on May 8, 1954, entered its said judgment on mandate.

9. That if a new or further trial is had herein pursuant to this Court's order of May 11, 1954, or otherwise, these Objectors will be obliged to incur the useless expense of preparing for and adducing evidence at said trial and of again appealing to the Honorable United States Court of Appeals for the Ninth Circuit, should this Court at such trial grant Applicant's application for order of sale, notwithstanding that all of the issues of this proceeding have heretofore been adjudicated adversely to Applicant by said Appellate Court's decision and opinion, order denying Applicant's petition for rehearing, and mandate and by this Court's decision and opinion, order of sale, and judgment on mandate.

This motion is based upon the records and files herein and upon the decision and opinion, order denying petition for rehearing, and mandate of and the other proceedings on appeal before the United States Court of Appeals for the Ninth Circuit.

Dated at Juneau, Alaska, May 28, 1954.

ROBERTSON, MONAGLE &
EASTAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

Notice

To the City of Yakutat, Alaska, Applicant, and Its
Attorney, William L. Paul, Jr.:

You are hereby notified that Objectors will present the foregoing Motion, together with their Objections to Notice, also to Interrogatories, of taking the deposition of Dorothy Henry, and their Objections to Applicant's Motion, dated May 12, 1954, to strike certain portions of the Printed Record on Appeal presented to the United States Court of Appeals for the Ninth Circuit, namely: Pages 113 through 114, Applicant's Interrogatories filed June 21, 1949, and Objectors' Answers thereto filed August 9, 1950; August 9, 1950; December 20, 1950, and Applicant's Interrogatories filed December 20, 1950, and Objectors' Answers dated December 20, 1950, and January 16, 1951, and also their Motion, dated May 28, 1954, to Suppress the Deposition of Dorothy Henry, to the Honorable George W. Folta, Judge of the above-entitled Court, in Anchorage, Alaska, at 10 a.m., June 4, 1954, or at 10 o'clock a.m. of the first day thereafter, not a legal holiday, on which he is in Anchorage, Alaska, either in Chambers or holding Court.

Dated at Juneau, Alaska, May 28, 1954.

ROBERTSON, MONAGLE &
EASTAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed May 28, 1954.

[Title of District Court and Cause.]

MOTION TO SUPPRESS DEPOSITION
OF DOROTHY HENRY

Objectors move to suppress the deposition of Dorothy Henry heretofore taken on May 24, 1954, before the U. S. Commissioner at Yakutat, Alaska, viz.:

1. Upon all of the grounds of all of the objections, set forth in Objectors' "Objections to Notice, also to Interrogatories, of taking the deposition of Dorothy Henry," which Objections were heretofore, prior to the taking of said deposition, served and filed herein, and which grounds by reference thereto are hereby made a part hereof.

2. Upon all of the grounds set forth in Objectors' "Motion to Vacate Order Entitled 'Order Shortening Time,' " which motion was heretofore or is now about to be served and filed herein and the grounds whereof by reference thereto are hereby made a part hereof.

3. Upon all of the grounds set forth in Objectors' "Objections to Applicant's Motion, dated May 12, 1954, to strike certain portions of the Printed Appeal Record presented to the United States Court of Appeals for the Ninth Circuit," which Objections were heretofore or are now about to be served and

filed herein and the grounds whereof by reference thereto are hereby made a part hereof.

4. The evidence adduced by said Deposition is not newly discovered evidence but was known to and could have been adduced, if material and relevant, by the Applicant at the trial before this Court in January, 1953; in fact, it was at least substantially before this Court at the trial in January, 1953, and before the United States Court of Appeals for the Ninth Circuit on the appeal to that Court by Objectors from this Court's order of sale of April 25, 1952; that said evidence presents no new or different issues of fact for the determination of this Court and, if it did, it cannot now be considered; in fact, it presents no issue of fact, and it disregards and ignores this Court's judgment on mandate entered herein on May 8, 1954, which is final and not appealable and also disregards, ignores, and seeks to alter, amend and modify said Appellate Court's decision and opinion of July 8, 1953; its order of August 13, 1953, denying Applicant's petition for rehearing, and its mandate of August 19, 1953, all of which were rendered, entered, or issued at a term of court of the Appellate Court which expired prior to October 1, 1953.

This motion is based upon the records and files herein and upon the decision and opinion, order denying petition for rehearing, and mandate of and the other proceedings on appeal before the United States Court of Appeals for the Ninth Circuit.

Dated at Juneau, Alaska, May 28, 1954.

ROBERTSON, MONAGLE &
EASTAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed May 28, 1954.

[Title of District Court and Cause.]

OBJECTORS' OBJECTIONS TO APPLI-
CANT'S MOTION, DATED MAY 12, 1954,
TO STRIKE PORTIONS OF THE
PRINTED APPEAL RECORD

Objectors object, upon the grounds hereinafter stated, to the granting of Applicant's Motion, dated May 12, 1954, to strike portions of the Printed Record on Appeal of the above proceedings to the United States Court of Appeals for the Ninth Circuit from the order of sale of this Court entered herein on April 25, 1952, which order of sale said Appellate Court heretofore reversed, i.e.:

1. Objectors by reference thereto hereby make as a part hereof all of the grounds contained in their "Objections (dated May 21, 1954) to Notice, also to Interrogatories, of Taking of the Deposition of Dorothy Henry," which Objections were heretofore served and filed herein.

2. Objectors by reference thereto hereby make as a part hereof all of the grounds contained in their "Motion (dated May 28, 1954) to Vacate Order 'Order Shortening Time,' " which said motion has been or is about to be served and filed herein.

3. This Court has no jurisdiction to grant said motion or to strike said or any portion of said record, and that the term at which the United States Court of Appeals for the Ninth Circuit issued on August 19, 1953, its mandate has expired, which Appellate Court had said record before it when it rendered its decision and opinion of July 8, 1953, and issued said mandate.

4. This Court has no jurisdiction to entertain, consider, or admit the alleged issue of fact that Objectors did not exhaust their administrative remedy before Applicant's Board of Equalization, or any other issue of fact on behalf of Applicant, and all such issues of fact, if ever relevant or material, were waived by Applicant's not urging them before either this Court at the trial hereof in January, 1953, or the Appellate Court upon the appeal before it, and, further, this Court in its opinion, filed March 6, 1952, decided that "in the absence of statutory authorization a municipality has no power to compromise a valid tax claim," but nonetheless said Appellate Court reversed this Court's order of April 25, 1952.

This motion is based upon the records and files herein and upon the decision and opinion, order

denying petition for rehearing, and mandate of and other proceedings on appeal before the United States Court of Appeals for the Ninth Circuit.

Dated at Juneau, Alaska, May 28, 1954.

ROBERTSON, MONAGLE &
EASTAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed May 28, 1954.

[Title of District Court and Cause.]

OBJECTORS' AMENDED NOTICE OF PRESENTATION OF MOTION TO VACATE ORDER ENTITLED "ORDER SHORTENING TIME"; OBJECTIONS TO APPLICANT'S MOTION TO STRIKE CERTAIN PORTIONS OF THE PRINTED RECORD ON APPEAL; MOTION TO SUPPRESS DEPOSITION OF DOROTHY HENRY; AND OBJECTIONS TO NOTICE, ALSO TO INTERROGATORIES, OF TAKING DEPOSITION OF DOROTHY HENRY

To the City of Yakutat, Alaska, Applicant, and Its
Attorney William L. Paul, Jr.:

You are hereby notified that instead of presenting the foregoing matters as stated in Objectors' Notice of May 28, 1954, which was heretofore served upon you and filed in the above proceedings, that Objectors

will present their Motion to Vacate Order entitled "Order Shortening Time" and their Objections to Applicant's Motion to Strike certain portions of the Printed Record on Appeal, and their Motion to Suppress the Deposition of Dorothy Henry and their Objections to Applicant's Notice, also to Interrogatories, of taking Deposition of Dorothy Henry, to the Honorable George W. Folta, Judge of the above-entitled Court, at 10 a.m., June 4, 1954, in Anchorage, Alaska, but, if said Judge is not then in Anchorage, Objectors will present all of said matters at said time and place to the Honorable District Judge of the District Court for the District of Alaska who is then presiding in Anchorage, Alaska; provided, if District Judge Folta or any other District Judge of the District Court is presiding in Juneau, Alaska, at said time then said matters will be presented to him in Juneau, Alaska.

Dated at Juneau, Alaska, May 29, 1954.

ROBERTSON, MONAGLE &
EASTAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed May 29, 1954.

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE OF
AMENDED NOTICE

United States of America,
Territory of Alaska—ss.

Elliott Robertson, being first duly sworn on oath, deposes and says: On May 29, 1954, at about 11:15 a.m., I personally called at the office of William L. Paul, Jr., who is attorney for the Applicant, the City of Yakutat, Alaska, which office is situated in the Klein Building, on Franklin Street, in Juneau, Alaska, to serve upon him a copy of the hereinafter mentioned Amended Notice; that I found said office locked with no one in charge, and that I thereupon then and there served said Amended Notice upon said William L. Paul, Jr., by inserting under the front door of said office and leaving in said office a true copy of Objectors' Amended Notice of Presentation of Motion to Vacate Order Entitled "Order Shortening Time"; Objections to Applicant's Motion to Strike Certain Portions of the Printed Record on Appeal; Motion to Suppress Deposition of Dorothy Henry; and Objections to Notice, also to Interrogatories, of Taking Deposition of Dorothy Henry, and filed the original of said Amended Notice with the Clerk of the above-entitled Court, which Original Amended Notice by reference thereto is hereby made a part of this affidavit.

/s/ ELLIOTT ROBERTSON.

Subscribed and Sworn to before me in Juneau, Alaska, this 1st day of June, 1954.

[Seal] /s/ R. E. ROBERTSON,
Notary Public for Alaska.

My commission expires June 24, 1957.

Receipt of copy acknowledged.

[Endorsed]: Filed June 1, 1954.

[Title of District Court and Cause.]

OBJECTORS' SECOND AMENDED NOTICE
OF PRESENTATION OF MOTION TO
VACATE ORDER ENTITLED "ORDER
SHORTENING TIME"; OBJECTIONS TO
APPLICANT'S MOTION TO STRIKE CER-
TAIN PORTIONS OF THE PRINTED REC-
ORD ON APPEAL; MOTION TO SUP-
PRESS DEPOSITION OF DOROTHY
HENRY; AND OBJECTIONS TO NOTICE,
ALSO TO INTERROGATORIES, OF TAK-
ING DEPOSITION OF DOROTHY HENRY

To the City of Yakutat, Alaska, Applicant, and Its
Attorney William L. Paul, Jr.:

Referring to Objectors' Notice of May 28, 1954,
and Amended Notice of May 29, 1954, heretofore
served upon you and filed, and to its attorney R. E.
Robertson's letter to you of June 2, 1954, stating
that

“Having been informed that neither Judge Folta nor Judge McCarrey are now in Anchorage, and that no Court will be held there until June 14, 1954, and that Judge Pratt will not hear motions in the District Court in Fairbanks prior to the 11th inst.: I will not present the Objectors’ various Motions and Objections on behalf of Objectors, which I heretofore served upon you, on the 4th inst. in Anchorage, and as stated in Objectors’ Notice of May 28, 1954, and their Amended Notice of May 29, 1954, but I will later further notify you by Amended Notice of the time and place when and where those motions and Objections will be presented to the District Court.”

of which letter you acknowledged receipt on June 2, 1954, You Are Hereby Notified that Objectors will present their Motion to Vacate Order entitled “Order Shortening Time” and their Objections to Applicant’s Motion to Strike certain portions of the Printed Record on Appeal, and their Motion to Suppress the Deposition of Dorothy Henry, and their Objections to Applicant’s Notice, also to Interrogatories, of taking Deposition of Dorothy Henry, to the Honorable George W. Folta, Judge of the above-entitled Court, either in open Court or in Chambers, at 10 a.m., June 10, 1954, in Anchorage, Alaska, or as soon thereafter as he is in Anchorage, Alaska; but if Judge Folta is not in Anchorage, Alaska, on June 10, 1954, the Objectors will present all of said matters to such District Judge of the

District Court as is first available on or after 10 a.m., June 10, 1954, in Anchorage, Alaska.

Dated at Juneau, Alaska, June 4, 1954.

ROBERTSON, MONAGLE &
EASTAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

[Endorsed]: Filed June 4, 1954.

[Title of District Court and Cause.]

MINUTE ORDER OF JUNE 11, 1954

Hearing on Objector's Motion To Vacate Order
Entitled "Order Shortening Time"

Now at this time hearing on objector's motion to vacate order entitled "Order Shortening Time" in cause No. 6581-A, entitled In the Matter of the Delinquent and Supplemental Delinquent Tax Roll of Real and Personal Property for the City of Yakutat, Alaska, for the years 1948 and 1949, came on regularly before the Court, the objectors not being present but represented by Raymond E. Plummer, of their counsel, appearing for R. E. Robertson, Juneau, Alaska, attorney of record.

Argument to the Court was had by Raymond E. Plummer, for and in behalf of the objectors.

Whereupon the Court having heard the argument of counsel and being fully and duly advised in the premises, announced it would reserve its decision.

[Title of District Court and Cause.]

MINUTE ORDER OF JUNE 12, 1954

Decision on Objector's Motion to Vacate Order
Entitled "Order Shortening Time"

Argument having been had heretofore and on the 11th day of June, 1954, and decision reserved in cause No. 6581-A, entitled In the Matter of the Delinquent and Supplemental Delinquent Tax Roll of Real and Personal Property for the City of Yakutat, Alaska, for the years 1948 and 1949, and decision reserved,

Whereupon court now renders decision "The objector's several motions are denied without prejudice to a renewal thereof upon the failure of the applicant to present a new duplicate delinquent tax roll on or before June 24."

(Raymond E. Plummer, appearing for R. E. Robertson, notified by phone this date.)

[Title of District Court and Cause.]

DEMAND FOR PRODUCTION OF RECORD,
ORDINANCES, RESOLUTIONS, ORIGINAL
DELINQUENT TAX ROLLS AND
OTHER DOCUMENTS AND PAPERS

To the Applicant City of Yakutat and Its Attorney
Wm. L. Paul, Jr.:

Without prejudice to Objectors' contention that the above-entitled Court is without authority or

jurisdiction to try the above proceedings on June 24, 1954, or at any other time, and without in any wise consenting to such or any trial thereof, Objectors make demand upon you that you produce at said trial on June 24, 1954, or at such other time as such trial may be had, should the above Court over and against Objectors' consent and objections hold another or further trial of said proceedings at said or any other time, all of the City of Yakutat's records, ordinances, resolutions, books, tax assessment lists, original delinquent tax rolls, minutes of Board of Trustees and of Board of Equalization, tax notices, receipts, letters, and all other papers or documents that in any manner pertain to or have a bearing upon or that control, govern or affect the assessment and levy of municipal taxes and the equalization thereof or that show any acts or procedure taken by the City of Yakutat or its Board of Trustees, its City Clerk, its Assessor, or by any other city officer or agent in connection with or in assessing, levying, imposing, or enforcing collection of, general municipal taxes for the municipal tax years of 1948 and 1949.

Dated at Juneau, Alaska, this 19th day of June, 1954.

ROBERTSON, MONAGLE &
EASTAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed June 21, 1954.

[Title of District Court and Cause.]

RESPONSE AND OBJECTIONS
TO DEMAND

United States of America,
Territory of Alaska—ss.

William L. Paul, Jr., of Juneau, Alaska, being first duly sworn, on oath deposes and says that he is municipal attorney for applicant and makes this response for applicant to Objectors' demand of June 21, 1954.

This demand was received by affiant at 3:35 p.m. June 21, 1954. I am also attorney of record herein and therefore know that no such demand has otherwise been received by applicant.

I have telegraphed for the papers demanded. They may arrive but I cannot be sure of that expectation because of uncertain radio conditions, weather conditions, plane schedules, and the press of business of other of applicant's officials who have actual custody of supplementing records.

I have already delivered to the Clerk of the Court all the records of applicant demanded that I have but they are not complete.

The next transportation scheduled to arrive in Juneau from Yakutat is at about 5 p.m. June 23, via Pacific Northern Airways. I don't expect, assuming the best possible conditions, to be able to complete the filing of such records until early on June 24, and cannot engage to do so in view of the lateness and untimeliness of this demand.

Furthermore, affiant believes that the Objectors have already substantially all of the records demanded in cause No. 6734-A and this cause between the same parties and involving the same issues, and the material evidence is already before the Court in such causes insofar as the Objectors have desired or required of applicant.

This is a partial new trial and no new evidence than is already in the official in either cause is to be adduced than what the parties could have had many months ago.

Objector's demand makes no showing to excuse the lateness of the demand, and if the applicant cannot supply the documents demanded, no postponement of the trial of this cause should be granted.

There is no showing of the necessity for such demanded documents made in such demand, nor apparent from the record of either cause, even though Objectors have had complete access to such records between 6 months and 2 years ago.

This is made on the files and records of this cause and cause No. 6734-A, of which latter the applicant hereby asks that the Court take Judicial Notice.

/s/ WILLIAM L. PAUL, JR.

Subscribed and sworn to before me this June 22, 1954.

[Seal] /s/ JOHN H. DIMOND,

Notary Public for Alaska.

My commission expires October 5, 1956.

Receipt of copy acknowledged.

[Endorsed]: Filed June 22, 1954.

[Title of District Court and Cause.]

AMENDED SUPPLEMENTAL DELINQUENT
TAX ROLL FOR 1949

Comes now Applicant to present its amended supplemental duplicate tax roll for delinquent taxes for 1949:

Description of Property and to whom Assessed:

Real property located on U. S. Survey No. 2881 (Alaska) owned by and assessed to Libby, McNeill & Libby and Yakutat & Southern Railway

Amount of Assessment: \$193,695.00

Tax rate: 13 mills

Amount of delinquent taxes: \$1,988.29

Penalty: \$198.83

Interest at 1% monthly since December 12, 1949, to June 24, 1954: \$1,181.04

Total of tax, penalty and interest: \$3,368.16

Certificate

I, Dorothy Henry, Clerk of the City of Yakutat, Alaska, do hereby certify that the foregoing is a true and correct amended supplemental roll of the delinquent real property taxes of the said City, for the municipal tax year of 1949; and that all of said taxes are due and became due on December 15, 1949; that the total amount of delinquent taxes, penalty

and interest together with the aggregate of the whole thereof assessed against each separate tract are due and delinquent and are shown on the foregoing roll.

During the time of publication and notice and up to the order of sale requested, any person may appear and make payment on any piece or tract of property set forth herein of said taxes, penalty and interest, and the clerk or other officer shall make proper notice of such payment on both the original and duplicate and amended supplemental tax rolls.

In Witness Whereof I have hereunto set my hand and the corporate seal of the City of Yakutat, Alaska, this June 23, 1954.

DOROTHY HENRY,
Clerk.

By /s/ WILLIAM L. PAUL, JR.,
Municipal Attorney.

/s/ WILLIAM L. PAUL, JR.,
Attorney for Applicant.

Receipt of copy acknowledged.

[Endorsed]: Filed June 23, 1954.

[Title of District Court and Cause.]

OBJECTORS' RENEWAL OF:

1. MOTION TO VACATE ORDER SHORTENING TIME, WHICH INCLUDED AN ORDER SETTING THIS PROCEEDINGS FOR TRIAL AT THIS TIME;
2. MOTION TO SUPPRESS DOROTHY HENRY'S DEPOSITION;
3. OBJECTIONS TO THE TAKING OF DOROTHY HENRY'S DEPOSITION; and
4. OBJECTIONS TO APPLICANT'S MOTION TO STRIKE CERTAIN PORTIONS OF THE PRINTED RECORD ON APPEAL

Objectors renew their motions and objections, which were presented on their behalf by Attorney Raymond E. Plummer to the Court in Anchorage on June 11, 1954, resulting in the Court's entering a minute order on June 12, 1954, substantially:

"The Objectors' several motions are denied without prejudice to a renewal thereof upon failure of the applicant to present a new duplicate delinquent tax roll on or before June 24."

Applicant has not to Objectors' knowledge presented a new duplicate delinquent tax roll.

Objectors continue to and do again renew all of the points and objections made in those Motions and Objections and in the Memorandum of Authorities and Written Argument presented to the Court by Mr. Plummer, and contend that this Court has no

authority or jurisdiction to hold any new or further trial on this proceedings.

Even if a new duplicate delinquent tax roll is or was presented, Objectors further contend that before this Court could hold a hearing thereon all the statutory jurisdictional steps would have to be taken; nor do they presently concede that the statute authorizes a new or amended duplicate delinquent tax roll for municipal taxes for either the years 1948 or 1949.

At the hearing on the Motions and Objections in Anchorage on June 11, 1954, the Court said to Mr. Plummer: "Why can't they start with a new delinquent tax roll if in fact the tax records of the City are in such shape that a new delinquent tax roll, showing either only the real property or showing the segregation of both, can be prepared? In other words, what authority is there that requires the City of Yakutat now to start over again? That is what I am interested in. * * * That is why I inquired whether there are authorities that would seem to require that this proceeding be begun anew. It is difficult for me to believe that there could be any such authorities."

While so far as Objectors can ascertain this particular point as to the particular statutes involved has not been decided by any Alaskan Court, however Objectors reiterate as stated on page 1 of their Written Argument:

"The delinquent tax roll is the sole pleading or document upon which the municipality's

application to enforce the tax lien by sale of the realty is founded. The entire proceedings is conditioned upon the delinquent tax roll."

and on page 2 thereof:

"The duplicate delinquent tax roll that is presented to the Court is the controlling document, not the one on file with the city clerk. Sec. 16-1-124, provides: 'Clerk to correct original delinquent tax roll and sell property. The clerk of the City shall immediately after the order of sale correct the original delinquent tax roll to correspond in all respects with the delinquent tax roll as passed upon and allowed by the court.' "

and on page 6 thereof:

"The delinquent tax roll has been presented both this and the Appellate Court, and the latter court has held that under it no order of sale can be entered by this court. Nothing further remains to be tried or decided. The judgment upon the mandate is a final order or judgment, other than it is not appealable because second appeals are not allowable, just as this Court's order of sale of April 25, 1952, was final until the Appellate Court reversed it and just as this Court's order denying the sale would have been had this Court, at the conclusion of the trial before it, properly entered an order on April 25, 1952, denying the application to sell."

Generally speaking the situation to us seems somewhat analogous to a foreclosure action where a judgment has been rendered on a mortgage describing the property as Tract A and in which service was necessarily obtained by publication of summons, which judgment was reversed upon appeal because the evidence actually showed that the mortgage was on Tract B. It scarcely seems possible that the mortgagor could then come into court in the same action and without publication of a new summons move the court to proceed to a hearing on a mortgage that correctly described the property as Tract B.

Regardless of the aptness or inaptness of the example, Objectors submit that a new or further trial in this proceedings even upon a new delinquent tax roll cannot be held without first complying with the statutory provisions of Sections 16-1-121 through 130, ACLA 1949, as to the preparation, certification, authorization, presentment, notice, and application for an order of sale upon such new delinquent tax roll.

Objectors also submit that the present duplicate delinquent tax roll cannot be amended or enlarged in any manner by aliunde evidence, such as Dorothy Henry's deposition or otherwise.

No Statutory Authority Exists to Amend the or Present a New Duplicate Delinquent Tax Roll or to Amend or Enlarge It by Aliunde Evidence.

The common definition of an assessment or tax roll or list is:

“While it seems that a paper or warrant containing a tax against a single place only may be regarded as a ‘tax list’ within the meaning of certain statutes, an assessment or tax roll or list appears ordinarily to be a completed record for the year of all the taxable persons and property within the tax district, so arranged and itemized as to show to each taxpayer who may examine it exactly what property he is assessed on and the amount of tax he is required to pay thereon, although it may perform other functions.”

84 CJS 888, § 454.

“An assessment list or roll can be made with proper legal effect only by the particular board or officer designated by statute.”

Ibid, Sec. 455, p. 888.

Objectors submit no distinction exists between adding omitted property to a delinquent tax roll than to offer evidence to show that real and personal property taxes, instead of being lumped, were assessed separately and segregated.

An assessor may not add omitted property to the assessment roll unless authorized by statute.

Ibid, p. 957, § 508.

The duplicate delinquent tax roll in question here shows that both real and personal property were assessed, but that they were not segregated or separately assessed; hence, the Appellate Court set aside this Court’s Order of Sale of April 25, 1952.

The rule is in order to sustain an addition of property by tax assessors as omitted, it must appear that the items added were not assessed in the original assessment.

Ibid, p. 959, § 508.

Even where reviewing boards or officers are authorized by statute to make corrections in the assessment roll, they must do so strictly in accordance with the statutory provisions.

Ibid, p. 998, § 520.

Here there is no statutory authority for any one to make any corrections in the duplicate delinquent tax roll.

This same principle is also laid down in

Ibid, p. 1002, § 521.

and in

Ibid, p. 1006, § 522.

Section 16-1-122, ACLA 1949, specifically provides what shall be contained in the delinquent tax roll, viz.:

“Such roll shall show therein the property assessed, the amount of the tax due, penalty and interest, separately stated on each tract assessed, to whom each tract is assessed, if assessed as unknown, so stated.”

The facts stated in the roll are conclusive. Dorothy Henry's deposition seeks to establish other facts and to impeach the roll.

“Extrinsic evidence is not admissible to establish facts which can be evidenced only by the assessment roll.”

84 CJS, p. 922, § 485.

She has no statutory authority to correct any error in the roll by showing what the Applicant now claims is the correct amount of taxes that should have been assessed against the real property only.

Ibid, § 520, p. 998, *supra*.

“The necessity, sufficiency, correction, and preparation of duplicate lists or rolls depend on statutory provisions.”

Ibid, § 842, p. 920.

“Tax records and documents are commonly considered conclusive and not subject to impeach by parol evidence.”

32 CJS, p. 806, § 883.

Affidavit of Service of notice to redeem from tax sale cannot be aided by parol.

Geil v. Babb,

242 NW (Iowa) 34.

Assessment roll. Insufficient description of land on assessment roll cannot be aided by extrinsic evidence, and name listed under heading of “owner” cannot aid description.

Ransom v. Young,

168 So. (Miss.) 473.

Plat book of an assessor cannot be impeached or varied by parol evidence as to the description of land.

Blayden v. Morris,
214 P. (Idaho) 1039.

Record of board of assessors, which is duly kept pursuant to statutory requirement, generally cannot be varied or added to by other evidence.

Carbone, Inc., v. Kelly,
194 N.E. (Mass.) 701.

Records of county commissioners as to whether a tract of land is seated or unseated and has been assessed, taxed, and sold by the treasurer cannot be varied by parol testimony or by the private record of an assessor.

McCall v. Lorimer,
Pa. 4 Watts 351.

See also:

Trustees of St. Paul Methodist Episcopal
Church South v. District of Columbia, 212
F. 2d 244;

Tumulty v. District of Columbia,
1949, 69 App. D.C. 390, 400, 102 F. 2d 254,
264;

Atchison, T. & S. F. Ry. Co. v. Elephant
Butte Irr. Dist., 10 Cir. 1940, 110 F. 2d
767, 773;

Cooley, Taxation,
Vol. 3 (4th Ed. 1924), 1046.

Since writing the foregoing paper, the City at 2:45 p.m. this day served upon Objectors a purported Amended Supplemental Delinquent tax roll for 1949. Objectors will move to strike it on all the grounds stated in its aforesaid motions and objections, memorandum of authorities, and written argument, and are filing a motion to strike it.

Dated at Juneau, Alaska, June 23, 1954.

/s/ R. E. ROBERTSON,
Of Attorneys for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed June 24, 1954.

[Title of District Court and Cause.]

MOTION TO STRIKE "AMENDED SUPPLEMENTAL DELINQUENT TAX ROLL FOR 1949"

Objectors move to strike Applicant's "Amended Supplemental Delinquent Tax Roll for 1949," because it was not prepared, presented, authorized, or noticed in accordance to, nor in any manner complies with the statutory provisions of Sections 16-1-121 through 130, ACLA 1949, or Applicant's tax ordinances, nor is it a new duplicate delinquent tax roll for 1949 in any manner conforming with either said statutes or ordinances, nor has any notice been published or posted for any period of time whatsoever of its presentation to this court nor any application been filed for an order of sale thereon, and William L. Paul, Jr., neither as mu-

municipal attorney nor otherwise, has any authority under said statutes or ordinances, or otherwise, to prepare, present, or sign it, and the tax ordinances of Applicant contain no provision for the assessment of 1% or any other interest upon the claimed or any alleged delinquent taxes, and that this Court is without authority or jurisdiction to entertain or consider said purported "Amended Supplemental Delinquent Tax Roll for 1949" or to permit in any manner either by aliunde evidence or otherwise the amendment or modification of that certain duplicate delinquent tax roll for 1949 that was before this Court when it entered its order of sale of April 25, 1952, and which was before the Appellate Court on the appeal thereto from said order.

Dated at Juneau, Alaska, June 23, 1954.

/s/ R. E. ROBERTSON,

Of Attorneys for Objectors.

Objectors' Motion to Strike Amended Supplemental Tax Roll

Objectors also move to strike on the further grounds:

1. Neither Sec. 16-1-122, ACLA 1949, nor any other statute authorizes or empowers The City or its Board of Trustees to make up or present an amended supplemental tax roll.

2. The city's Tax Ordinances do not provide that the Clerk or any other official shall make up or present an amended supplemental tax roll for 1949 or any other year.

3. Neither Sec. 16-1-122, ACLA 1949, nor any other statute authorizes or empowers the City of Yakutat to make up or present an amended supplemental tax roll for any tax year after the duplicate delinquent tax roll for that year has been made up and presented to this Court with an application for order of sale.

4. Neither Sec. 16-1-122, ACLA 1949, nor any other statute authorizes or empowers the City of Yakutat to present to the Court for an order of sale an application, as in this proceeding, which application was made more than 3 years prior to the making of this purported amended supplemental tax roll, whose purported taxes, penalty and interest are sought to be made a lien upon real property.

5. The City's corporate seal is not affixed to the purported amended supplemental tax roll nor is it endorsed under the hand of the Clerk of the Court.

6. The original of the purported amended supplemental tax roll has not been filed and is not on file with the municipal clerk.

7. No proof has been made of either publishing or posting any notice of application to this Court of an order of sale on the purported amended supplemental tax roll.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed June 24, 1954.

[Title of District Court and Cause.]

MEMORANDUM DECISION

William L. Paul Jr., attorney for applicant.

R. E. Robertson, attorney for objectors.

The principal question now presented in this protracted litigation is whether, upon the reversal of this Court's Order of Sale, 206 F. 2d 612, because of the failure of the City to segregate the real from the personal property, the City must start anew and take all the steps set forth in Secs. 16-1-122, A.C.L.A. 1949, et seq., in regard to the preparation and presentation of a new tax roll, or whether it may present an amended roll on the basis of the record as heretofore made.

An Order of Sale has already been entered as to all property listed in the roll save that of the objectors. The Court expressed the opinion that the roll, found deficient in the respect pointed out by the Court of Appeals, could not be amended and that a new proceeding would have to be initiated, but upon further consideration I am inclined to accept the view urged by the City, principally because no useful purpose could be served by requiring the City to duplicate everything it has already done up to the presentation of the roll. The only property now involved is that of the objectors. Every possible objection available at every step of the proceeding has been made and disposed of. The only purpose that the objectors could now have in urging that the City be required to retrace its steps is to

further delay and impede the City in its effort to collect these taxes.

In this situation I am inclined to hold that, even though the procedure now adopted by the City may be somewhat irregular, it is nevertheless within the meaning of "subsequent proceedings," as that term is used in Sec. 16-1-124 that "no objection to the valuation of the property, the manner of the assessment and levy of the tax, or any of the 'subsequent proceedings' shall be entertained by the Court which does not affect the substantial rights of the parties interposing the objection." Moreover, this procedure would appear to be in the interest of justice.

Hence, I conclude that in the circumstances of this case the City may resume its effort to collect these taxes by presenting a new or amended tax roll on the basis of the record as made.

I am also of the opinion that evidence in support of the objection that the properties have been overvalued is not admissible here because it was not presented to the Board of Equalization.

It follows that the several motions of the objectors should be denied and that the application for an Order of Sale of the objectors' property should be granted.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed June 25, 1954.

[Title of District Court and Cause.]

OBJECTIONS TO ORDER OF SALE

Objectors hereby object to the entry of the Order of Sale, which was served upon them on June 26, 1954, because the entry thereof is an abuse of discretion by this Court particularly in that on June 24, 1954, the only matters heard were Objectors' Motion to Vacate the "Order Shortening Time" of May 11, 1954; their Motion to Suppress Dorothy Henry's deposition; their Motion to Strike Applicant's purported Amended Supplemental Duplicate Delinquent Tax Roll of 1949; their Objections to the taking of and to the direct interrogatories propounded in Dorothy Henry's deposition; and their Objections to Applicant's Motion to Strike certain portions of the Printed Record on Appeal, and, further, in that on June 24, 1954, in open Court Objectors stated that should the Court deny their said Motions, they required time to obtain their evidence, including witnesses to prove that the City's official tax records and ordinances, which then were and now are in the custody of the Clerk of this Court, show that the City had not complied in this proceeding with the statutory provisions of Section 16-1-121 through 130, ACLA 1949, and in that the Objectors have not been afforded an opportunity to make any defense to Applicant's purported Amended Supplemental Duplicate Delinquent Tax Roll for 1949.

Objectors further object upon the ground that said Order of Sale is based upon aliunde evidence,

viz.: Dorothy Henry's deposition that modifies, amends, or impeaches the Duplicate Delinquent Tax Roll for 1949 upon which the Application of January 3, 1951, for Order of Sale is based, and said Order of Sale is based upon a pretended new defense, which, if valid, was waived by Applicant's not presenting it at the hearing of these proceedings in January, 1952, i.e., that evidence of over-valuation of Objectors' property is not admissible because Applicant contends that such over-valuation was not presented to Applicant's Board of Equalization.

Objectors further object upon the grounds, viz.:

1. This Court is bound by the rule of law laid down by the United States Court of Appeals for the Ninth Circuit on the appeal to it from the Order of Sale entered by this Court on April 25, 1952, which is reported in 206 F. 2d 612, and whose opinion and mandate are *res judicata* herein, and this Court has no authority or jurisdiction to enter or allow said order.

2. Said Order is contrary to the law and to the evidence and entirely ignores the fact that the preponderance of the evidence showed that the assessments for each year were over-valued and over-assessed, and disregards the fact that the evidence proved that the actual value of the various properties during the two years were as claimed by objectors, and disregards the fact that for neither said years were any of said taxes fairly assessed or equalized.

3. Said Order is based either upon a duplicate delinquent tax roll which did not show and separately state and show the amount of taxes, penalty and interest due upon realty alone and lumped and stated in a single amount the taxes upon realty and personalty, and is based upon incompetent, aliunde evidence of Dorothy Henry that impeaches it, or upon a purported Amended Supplemental Duplicate Delinquent Tax Roll for 1949 which is invalid as stated in Objectors' Motion to Strike it, dated June 23, 1954, which by reference thereto is incorporated herein.

4. Said Order imposes upon Objector Yakutat & Southern Railway's real property a lien for interest of 1% per month from December 15, 1949, to date upon the sum of \$1,988.29, whereas Applicant's tax Ordinances 1, 2 and 4, which by reference thereto are incorporated herein and which are now in the custody of this Clerk, and particularly Ordinance 1, enacted July 3, 1948, and Ordinance 2, enacted September 4, 1948, and which were in effect during the tax year 1949 did not and do not now provide or fix any rate of interest to be paid upon either delinquent taxes or penalties thereon.

5. Under said Order Applicant has applied \$1,751.75, paid by Objectors Libby, McNeill & Libby and Yakutat & Southern Railway for 1949 contrary to the respective Objectors' instructions as to the payment of those sums and the application thereof, and which sums the Applicant retained and has not returned to Objectors.

6. Said Order imposes a lien upon Objector Yakutat & Southern Railway's real property for attorney's fees of \$748.06 whereas neither Sections 16-1-121 through 130, ACLA 1949, nor any other statute authorizes an attorney's fee to be taxed as costs in these proceedings, or to make it a lien upon said Objectors' real property, and that the allowance of any of said attorney's fees is contrary to the provisions of the United States Constitution and particularly to the Fifth and Fourteenth Amendments, and constitutes a deprivation of said Objectors' real property without due process of law or just compensation.

Dated at Juneau, Alaska, June 28, 1954.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed June 28, 1954.

In the District Court for the Territory of Alaska,
Division Number One, at Juneau

No. 6581-A

In the Matter of:

THE DELINQUENT AND SUPPLEMENTAAL
DELINQUENT TAX ROLL OF REAL
AND PERSONAL PROPERTY FOR THE
CITY OF YAKUTAT, ALASKA, FOR THE
YEARS 1948 AND 1949.

LIBBY, McNEILL & LIBBY, a Corporation, and
YAKUTAT & SOUTHERN RAILWAY, a
Corporation,

Objectors.

ORDER OF SALE

The application of the City of Yakutat with amended supplemental delinquent tax roll for 1949 and the Objectors' objections having come on regularly for hearing, the parties appearing by their attorneys, William L. Paul, Jr., for applicant, and R. E. Robertson for Objectors; and the Court having considered the admissible evidence adduced by the parties on the previous trial and the evidence adduced at this hearing, and having considered the arguments of counsel; and being fully advised in the premises, it is

Ordered, Decreed and Adjudged that Objectors are delinquent for a balance due of real property taxes in the sum of \$1,988.29 since December 15, 1949, plus penalty of 12% thereon, plus interest on

such delinquent tax at the rate of 1% monthly, assessed against real property of Objectors, being that embraced by United States Survey No. 1758 (Alaska), also known as Survey No. 2881 (Alaska); that said property be sold for the payment of the aforesaid sums, including costs of this hearing, including an attorney's fee to applicant of \$748.06 as for contested lien cases, according to local rule No. 45, said costs to be taxed by the Clerk of this Court; against which sums Objectors shall have a credit, \$719.94, for costs taxed on the Objectors' appeal to the Court of Appeal; said sale to be at a time certain as fixed by applicant within 60 days in the manner prescribed by law.

Done at Juneau, Alaska, this June 29, 1954.

/s/ GEORGE W. FOLTA,
District Judge.

Copy received June 26, 1954.

I object to the entry of this order until I have time to present proper objections to it.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

[Endorsed]: Filed and entered June 29, 1954.

[Title of District Court and Cause.]

MOTION TO AMEND OR
ALTER MINUTE ORDER

Defendants move to alter or amend the minute order entered on June 29, 1954, to also show that in this cause the objections stated in Defendants' Motion, dated June 23, 1954, to Strike Applicant's Amended Duplicate Delinquent Tax Roll for 1949, dated June 23, 1954, were correct in fact, but that Applicant did not admit their validity.

Dated at Juneau, Alaska, June 30, 1954.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

Affidavit of mail attached.

[Endorsed]: Filed July 1, 1954.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Defendants move for a new trial because of abuse of discretion exercised and errors committed by the Court in the conduct of these proceedings all of which appear in the dockets, files, and record of this cause, and all of which are incorporated herein by reference to said dockets, files and record, and in ignoring the provisions of Section 16-1-121 through 131, ACLA 1949, whereby these proceedings are governed, and in not construing those statutes

in favor of Objectors and against the Applicant but to the contrary in all instances either ignoring those statutes or construing them in favor of the Applicant and against the Objectors, and in denying and overruling Objectors' Motion, dated May 28, 1954, to Vacate Order, dated May 11, 1954, entitled "Order Shortening Time"; Motion, dated May 28, 1954, to Strike Dorothy Henry Deposition; Motion, dated June 23, 1954, to Strike "Amended Supplemental Delinquent Tax Roll for 1949"; and Objectors' Renewal, dated June 23, 1954, of their said two Motions of May 28, 1954, and of their herein-after mentioned Objections of May 21 and 28, 1954; and Objectors' Objections of January 8, 1952, Supplemental Objections of January 8, 1952, Further Amendatory and Supplemental Objections of January 18, 1952; Objections, dated May 21, 1954, to Notice also to Interrogatories, to taking the Deposition of Dorothy Henry; Objections, dated May 28, 1954, to Applicant's Motion to Strike portions of the Printed Record on Appeal; and Objections, dated June 28, 1954, to Order of Sale; and in not abiding by the principal of law announced by the Honorable United States Court of Appeals for the Ninth Circuit in *Libby, McNeill & Libby, et al., v. The City of Yakutat, Alaska*, 206 F. 2d 612, whose opinion and mandate therein are res judicata herein, and constituted a final termination of this proceedings and this Court was without authority to do anything further herein than to file and enter said mandate of the Appellate Court and this Court's judgment on said mandate and to tax costs against

the Applicant, but to the contrary, this Court in entering said Order of Sale considered Applicant's pretended Amended Supplemental Duplicate Delinquent Tax Roll, which was not prepared, authorized, or presented in accordance either with any of the provisions of Sections 16-1-121 through 131, ACLA 1949, or with any of the provisions of Applicant's Tax Ordinances 1, 2 and 4, and admitted and considered the incompetent, aliunde evidence of Dorothy Henry by deposition not only in proof and support of said Amended Supplemental Duplicate Delinquent Tax Roll but also to amend, alter, and modify the Duplicate Delinquent Tax Roll that was presented to this Court by Applicant's Application of January 3, 1951, and also permitted Applicant to raise the issue, which had been waived by Applicant's not raising it at the hearing of this proceeding in January, 1952, that Objectors' claim of over-valuation and over-assessment of their properties was not admissible because not presented to Applicant's Board of Equalization, and this Court received, considered and based in whole or in part its Order of Sale of June 29, 1954, upon said issue notwithstanding it was irrelevant, immaterial, and contrary to the law and the evidence, and disregards the duty of the Court imposed upon it by Sec. 16-1-124, ACLA 1949, to adjust on equitable principles the over-valuations and over-assessments of Objectors' property, and particularly of Objector Yakutat & Southern Railway's real property and by its Order of Sale of June 29, 1954, creating a lien upon Objector Yakutat & Southern

Railway's real property for interest at 1% monthly, as stated in said Order of Sale, notwithstanding that Applicant's Tax Ordinances do not provide or fix any rate of interest against delinquent taxes, and also for an attorney's fee of \$748.06, all without due process of law and without just compensation, contrary to the Constitution of the United States, and particularly to the Fifth and Fourteenth Amendments thereof, and which Order of Sale is the result of the Court's placing throughout these proceedings the burden upon the Objectors instead of upon the Applicant without construing said statutes and any doubts of the construction of or ambiguities in them in favor of the Objectors, and ignoring the evidence that the Applicant's assessments are not actual values but are over-valuations and over-assessments made by Applicant in bad faith, and ignoring the evidence that Applicant applied, without authority of law and against Objectors' consent and contrary to their written instructions, monies paid by them in full payment of all taxes for the year 1949 upon their respective properties at their actual values, first upon personal property taxes thereby leaving purported unpaid taxes upon Objector Yakutat & Southern Railway's real property which is to be sold under said Order, which is contrary to the law and the evidence, regardless of whether based in whole or in part upon either or both the Duplicate Delinquent Tax Roll presented with Applicant's Application of January 3, 1951 (Printed Appeal Record, pp. 1, 2), or said pretended Amended Supplemental Duplicate De-

linquent Tax Roll of June 23, 1954; and in allowing costs and making them a lien upon Objector Yakutat & Southern Railway's real property notwithstanding the length of this litigation has been Applicant's fault and the Court found that Applicant's procedure was irregular.

This motion is based upon the records, dockets, and files of this cause and upon the Official Court Reporter's notes of the various proceedings herein, and upon the Applicant's Tax Ordinances 1, 2 and 4, which are now in the custody of the Clerk of this Court, and in regard to interest upon Applicant's admission in its brief of June 24, 1954, in Cause No. 6734-A, of the ambiguity of Section 12 of its Tax Ordinance 1; and in support thereof Objectors cite, in addition to those decisions heretofore cited to the Court, the U. S. Supreme Court decisions of *Gould v. Gould*, 245 U. S. 151, 153, and *U. S. v. Merriam*, 263 U. S. 179.

Dated at Juneau, Alaska, July 2, 1954.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

[Endorsed]: Filed July 2, 1954.

[Title of District Court and Cause.]

NOTICE OF HEARING BY APPLICANT ON
OBJECTORS' MOTION FOR NEW TRIAL

To the Above-Named Objectors and Their Attorney
R. E. Robertson, Esq.:

Please take notice that applicant in the above-entitled causes will call up for hearing before the above-entitled Court at its courtroom in the Federal Building at Juneau, Alaska, at the hour of 10:00 o'clock a.m., July 26, 1954, your motions for new trial in said causes which motions were served on applicant on July 2, 1954.

July 21, 1954.

/s/ WILLIAM L. PAUL, JR.,
Applicant's Attorney.

[Endorsed]: Filed July 21, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE UNITED
STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT UNDER RULE 73(b)

Notice is hereby given that Libby, McNeill & Libby, a corporation, and Yakutat & Southern Railway, a corporation, the Objectors in the above proceedings, hereby appeal to the United States Court of Appeals for the Ninth Circuit from that certain Order of Sale made and entered in the above pro-

ceedings on June 29, 1954, and from that certain Order, made and entered in said Proceedings on July 28, 1954, denying their Motion for New Trial.

Dated at Juneau, Alaska, this 30th day of July, 1954.

/s/ R. E. ROBERTSON,
Attorney for Objector Appellants Libby, McNeill &
Libby and Yakutat & Southern Railway.

Receipt of copy acknowledged.

[Endorsed]: Filed in open court July 30, 1954.

[Title of District Court and Cause.]

SUPERSEDEAS ON APPEAL

Whereas, Libby, McNeill & Libby, a corporation, and Yakutat & Southern Railway, a corporation, the objectors in the above proceedings, have appealed to the United States Court of Appeals for the Ninth Circuit from that certain order of sale made and entered in the above proceedings on June 29, 1954, wherein and whereby in the above proceedings the District Court for the Territory of Alaska, First Judicial Division, ordered the sale of the objectors' real property to be sold by said applicant at public sale to satisfy and discharge the lien of the taxes that are the subject of said proceedings, together with penalty and interest and costs upon said taxes and costs and disbursements of this proceeding including an attorney fee, and from that

certain order, made and entered in said proceedings on July 28, 1954, denying objectors' motion for a new trial; and,

Whereas, said objectors are desirous of staying the sale so ordered by said order of sale and so appealed from, and the Court has set, with applicant's consent, the penal amount of the supersedeas and cost bond in the sum of \$4,000.00.

Now, Therefore, in consideration of the premises and such appeal, we Libby, McNeill & Libby, a corporation, objector, and Yakutat & Southern Railway, a corporation, objector, as Principals, and the United States Fidelity and Guaranty Company, a corporation organized and existing under the laws of the State of Maryland and engaged in and authorized to engage in business in the Territory of Alaska, as Surety, do hereby jointly and severally undertake and promise, and acknowledge ourselves bound in the sum of \$4,000.00 that the objector corporation Libby, McNeill & Libby and objector corporation Yakutat & Southern Railway will satisfy in full said taxes, together with penalty and interest and costs upon said taxes, and costs and disbursements of this proceedings, as well as damages for delay, if for any reason the appeal is dismissed or if said order of sale is affirmed, and similarly to any and all extent should said order of sale be modified, and such costs, interest, and damages, as the appellate court may adjudge and award.

In Witness Whereof Libby, McNeill & Libby, a corporation, objector, and Yakutat & Southern Rail-

way, a corporation, objector, as Principals, and United States Fidelity and Guaranty Company, a corporation, as Surety, have caused these presents to be executed this 30th day of July, 1954, in Juneau, Alaska.

LIBBY, McNEILL & LIBBY, a
Corporation, Objector;

By /s/ R. E. ROBERTSON,
Its Attorney and Agent.

Executed in the presence of:

/s/ F. O. EASTAUGH,

/s/ EILEEN ROBERSON.

YAKUTAT & SOUTHERN
RAILWAY, a Corporation,
Objector;

By /s/ R. E. ROBERTSON,
Its Attorney and Agent,
Principals.

Executed in the presence of:

/s/ F. O. EASTAUGH,

/s/ EILEEN ROBERSON.

UNITED STATES FIDELITY AND GUAR-
ANTY COMPANY, a Corporation;

By /s/ R. E. ROBERTSON,
Its Attorney-in-Fact & Agent,
Surety.

Executed in the presence of:

/s/ F. O. EASTAUGH,

/s/ EILEEN ROBERSON.

Attest: Corporate Seal.

United States of America,
Territory of Alaska—ss.

Acknowledged before me this 30th day of July, 1954, in Juneau, Alaska, by R. E. Robertson as attorney and agent of the objector corporations Libby, McNeill & Libby and Yakutat & Southern Railway, Principals, as their free and voluntary act and deed and as attorney-in-fact and agent on behalf of the United States Fidelity and Guaranty Company, a corporation, Surety, as the latter's free and voluntary act and deed.

Witness my hand and official seal the day and year herein first written.

[Seal] /s/ FREDERICK O. EASTAUGH,
Notary Public for Alaska.

My commission expires June 10, 1958.

Approved and appeal allowed and order of sale stayed this 30th day of July, 1954, in Juneau, Alaska.

[Seal] /s/ GEORGE W. FOLTA,
Judge of the District Court for the Territory of
Alaska, Division No. 1.

[Endorsed]: Filed in open court July 30, 1954.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE AND
DOCKET APPEAL

It appearing to this Court that the objecting Appellants requested the official Court Reporter on July 30, 1954, to prepare the transcript of all proceedings reported by her in the above action but that she has not yet done so and is now absent on vacation and does not contemplate returning to Juneau, Alaska, from her vacation until on or after September 10, 1954, but that Appellants' present time within which to file and docket their appeal will expire on September 9, 1954, and that it is impossible for them to so file and docket their appeal until they are furnished by the Reporter with her said transcript,

Now, Therefore, It Is Hereby Ordered that the Appellants be, and they are hereby, granted until October 10, 1954, within which to file their record on appeal and docket their appeal with the Clerk of the United States Court of Appeals for the Ninth Circuit in San Francisco, California.

Done in Anchorage, Alaska, this 31st day of August, 1954.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed September 3, 1954.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE AND DOCKET APPEAL

Objectors having made and filed herein their Motion for an extension of time until October 28, 1954, to file and docket their appeal with the United States Court of Appeals for the Ninth Circuit, and it appearing that owing to pressure of work the official court reporter was unable until October 2, 1954, to transcribe and file her transcript of all the proceedings reported by her in the above action, and that the Deputy Clerk in Juneau is under such pressure of work that she will not be able to prepare and certify for inclusion in the record on appeal this Court's record in time to reach the Honorable United States Court of Appeals for the Ninth Circuit by October 10, 1954, the praecipe for which record the Objectors filed with the Clerk in Juneau in the forenoon of October 4, 1954, and that on August 31, 1954, this Court by its Order extended the time to file and docket the appeal with the appellate court until October 10, 1954, they having on July 30, 1954, served and filed their Notice of Appeal to the appellate court, and that the 90-day period within which to file and docket said appeal will not expire until October 28, 1954,

Now, Therefore, It Is Hereby Ordered that the Objectors be, and they are hereby, granted until October 28, 1954, within which to file their record on appeal and docket their appeal with the Clerk

of the United States Court of Appeals for the Ninth Circuit in San Francisco, California.

Done in Ketchikan, Alaska, this 6th day of October, 1954.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed October 6, 1954.

[Title of District Court and Cause.]

MINUTE ORDERS

Minute Order Dated Friday, April 25, 1952, as entered in Journal No. 20, Page 415.

This matter came before the court for the signing of the Findings, Conclusions and Judgment. Both parties had filed their proposed pleadings. After discussion between court and counsel, the Court took the matter under advisement.

Minute Order Dated Saturday, April 26, 1952, as entered in Journal No. 20, Page 419.

At this time the Court signed the Findings of Fact, Conclusions of Law and Order of Sale as presented by William L. Paul, Jr., in behalf of the City of Yakutat. Upon request of R. E. Robertson, counsel for the Objectors, the Supersedeas Bond was set at \$3,500.00. No attorney fee was allowed because of irregularities on the part of the Yakutat of the kind that encourage litigation.

Minute Order Dated Wednesday, April 30, 1952, as entered in Journal No. 20, Page 425.

There appeared R. E. Robertson who presented to the court a Supersedeas Bond on Appeal in the amount of \$3,500.00. Upon oral motion to Mr. Robertson, the Court signed an Order approving the Bond, allowing the appeal and staying the sale of the property therein.

Minute Order Dated Friday, May 16, 1952, as entered in Journal No. 20, Page 441.

There appeared R. E. Robertson, Counsel for Libby, McNeill & Libby and Yakutat and Southern Railway, who moved the court for an order extending the time in which to docket their appeal in the United States Court of Appeals for the 9th Circuit. After consideration the Court signed an Order extending the time to and including July 15, 1952.

Minute Order Dated Friday, May 16, 1952, as entered in Journal No. 20, Page 443.

At this time R. E. Robertson, counsel for the Objectors herein, brought up the matter of having the court make an order regarding the rejection of the Findings of Fact and Conclusions of Law as proposed by the Objectors. The Court stated that it has signed the Findings of Fact and Conclusions of Law as presented by the Petitioner and that such signing infers the rejection of findings submitted which are inconsistent with those submitted and signed.

Minute Order Dated Friday, May 7, 1954, as entered in Journal No. 21, Page 443.

This case was called upon on Objectors' Motion for Judgment on Mandate, and Petitioner's objections thereto. Wm. L. Paul, Jr., for Petitioners; R. E. Robertson for the Objectors. Mr. Robertson spoke briefly and submitted the motion. Mr. Paul stated his objections to the motion and stated that he would produce authorities for his position.

Minute Order Dated Tuesday, May 11, 1954, as entered in Journal No. 21, Page 445.

Petitioners had filed a Motion for Trial and noticed it for being called up at this time. Wm. L. Paul, Jr., appeared for Petitioners; F. O. Eastaugh appeared in behalf of R. E. Robertson, counsel for Objectors. Mr. Eastaugh objected to the setting of the case for trial in behalf of Mr. Robertson, calling attention to the rule which requires notice to the opposing parties. After discussion, the court ruled that the time for notice could be shortened by the Court, and advised Mr. Paul that if he desired to present such an Order, the court would allow same and then set the date for trial.

Minute Order Dated May 12, 1954, as entered in Journal No. 21, Page 448.

Upon presentation the Court signed Order shortening the time to hear a Motion and setting this matter for hearing on June 24, 1954.

Minute Order Dated May 13, 1954, as entered in Journal No. 21, Page 450.

Upon presentation, the Court signed an Order Denying Applicant's Objections to Judgment on the Mandate.

Minute Order Dated Thursday, June 24, 1954, as entered in Journal No. 21, Page 462.

This matter came on for hearing on the following motions. William L. Paul, Jr., was present for Plaintiff; R. E. Robertson for Objectors. Mr. Paul offered the Deposition of Dorothy Henry, City Clerk of Yakutat and the entire previous record, except portions which he had moved to strike. Mr. Robertson renewed all previous objections considered by the court. Mr. Robertson filed a Motion to Strike Amended Supplemental Delinquent Tax Roll for 1949. He also filed Objectors' Renewal of Motion to Vacate Order Shortening Time, which included an Order setting this Proceeding for Trial at this time; (2) Motions to suppress Dorothy Henry's Deposition; (3) Objections to the taking of Dorothy Henry's Deposition and (4) Objections to Applicant's Motion to strike certain portions of the printed record on Appeal. After counsel presented their arguments, the Court took the matter under advisement.

Minute Order Dated Tuesday, June 29, 1954, as entered in Journal No. 21, Page 475. Applies to Nos. 6581-A and 6734-A.

At this time these matters came before the court for hearing on Objections to Order of Sale in the above-entitled cases. William L. Paul, Jr., was

present in behalf of Plaintiffs; R. E. Robertson for Objectors. After argument the Court directed that in Cause No. 6581-A evidence heretofore introduced in support of objections to the Tax Roll be considered in support of the objections to the present tax roll. Thereafter the Court signed Order of Sale in each case.

It was stipulated that the amount of the supersedeas bond in Cause No. 6581-A may be fixed at \$4,000 and in Cause No. 6734-A at \$6,000.

Minute Order Made on Tuesday, July 27, 1954, as entered in Journal No. 21, Page 493. Applies to Nos. 6581-A and 6734-A.

Hearing on Motion for a New Trial in the above cases set for 2 p.m. Wednesday, July 28th.

Minute Order Dated July 28, 1954, as entered in Journal No. 21, Page 496.

Objectors' Motion, on June 30, 1954, to amend or alter the Minute Order entered in Cause No. 6581-A on June 29, 1954, was allowed upon applicant's consent but subject to applicant's non-admission of any objectors' legal conclusions stated in their Objections in support of their motion, dated June 23, 1954, to strike Applicant's Amended Duplicate Delinquent Tax Roll for 1949, dated June 23, 1954, and without admitting the legal validity of those Objections.

Objectors' Motions for New Trial in both Causes Nos. 6581-A and 6734-A, after argument of counsel, were denied.

Applicant's Application to withdraw its original municipal records on deposit with the Clerk of the Court was allowed upon applicant's agreement that it would promptly return into the custody of the Clerk such of those records as the objectors might request.

Minute Order Dated Friday, July 30, 1954, as entered in Journal No. 21, Page 500. This applies to Nos. 6581-A and 6734-A.

At this time Mr. R. E. Robertson, Attorney for Objector Appellants, Libby, McNeill & Libby and Yakutat & Southern Railway, filed Notice of Appeal to the U. S. Court of Appeals for the 9th Circuit under Rule 73(b) and Supersedeas on Appeal, which the Court approved, Mr. Wm. L. Paul, Jr., Attorney for Applicant Appellee for City of Yakutat was present and stated he had no objection to filing.

Approved and appeal allowed and order of sale stated this 30th day of July, 1954, in Juneau, Alaska.

Minute Order Dated October 6, 1954, as entered Journal No. 22, Page 39.

Upon consideration of the Objectors' Motion for Extending Time to docket Appeal, the Court granted the motion and signed an Order thereon.

In the U. S. District Court for the District of
Alaska, Division Number One, at Juneau

No. 6581-A

In the Matter of

THE DELINQUENT TAX ROLL OF REAL
AND PERSONAL PROPERTY FOR THE
CITY OF YAKUTAT, ALASKA, FOR THE
YEARS 1948 AND 1949

LIBBY, McNEILL & LIBBY, a Corporation, and
YAKUTAT & SOUTHERN RAILWAY, a
Corporation,

Objectors.

REPORTER'S TRANSCRIPT OF RECORD

Bt It Remembered that on the 8th day of January, 1954, court having convened at 10:00 o'clock a.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; upon the calling of the Motion Calendar the following proceedings were had with reference to the above-entitled cause:

The Clerk: No. 6581-A, City of Yakutat, In the Matter of the Delinquent Tax Rolls, 1948 and 1949. October 8, Motion to File Mandate and for Judgment on Mandate. Mr. Paul and Mr. Robertson. That mandate is in my office.

The Court: Well, the motion is granted.

Thereafter on the 28th day of April, 1954, court having convened at 2:00 o'clock p.m. at Juneau,

Alaska; the [1*] Honorable George W. Folta, United States District Judge, presiding; William L. Paul, Jr., attorney for the applicant, and R. E. Robertson, attorney for the objectors, both being present; the following proceedings were had:

The Clerk: Next is the argument in No. 6734-A, In the Matter of the Delinquent Taxes of Yakutat for the years 1950 and 1951.

Mr. Robertson: If the Court please, before that matter is presented I would like to call the Court's attention to the fact, I supposed it was submitted last fall, but the Court has never entered the judgment on the mandate from the Circuit Court of Appeals which I presented here last October. I think it ought to be signed, your Honor. It has never been signed.

The Court: If it was presented, it would have been signed.

Mr. Robertson: Anyhow, it is here and it has never been signed up.

Mr. Paul: I have some objections to that, your Honor, to the form of order.

Mr. Robertson: Judgment on mandate.

Mr. Paul: That is right, judgment on mandate. I have just been waiting for counsel to call the matter up.

The Clerk: Hasn't the mandate ever been presented? [2]

Mr. Paul: The judgment on the mandate is what he is talking about.

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

The Court: Has the mandate been spread on the journal of the Court?

The Clerk: That is the question I asked, may it please the Court. Is it in our file?

Mr. Robertson: It has been in your file since last fall.

The Court: Is the entry of a judgment here on the mandate necessary to this argument scheduled for this time?

Mr. Paul: I don't think so.

Mr. Robertson: I think it should be entered because after all it is a mandate that has come down from the Appellate Court.

The Court: Well, I understand that. The only question is whether it should be entered now, whether it is necessary to——

Mr. Robertson: I would like to have it entered, your Honor. The Appellate Court itself taxed \$719 against the City of Yakutat, which I have conversely wrote to Mr. Paul about months ago trying to make some kind of settlement or agreement about it, but I got no response from him, and it seems to me only proper it should be entered.

The Court: Well, there isn't any question about it, but counsel here has said that he wants to object to it, and [3] my inquiry was made with the view to determine whether it had to be entered before this argument could be heard.

Mr. Robertson: I think it is appropriate. I don't say it has to be.

The Court: I think maybe you should have filed written objections to it if you wanted to object to it.

Mr. Paul: As soon as it is noticed for hearing——

Mr. Robertson: It shows there I gave him notice, over six months ago.

Mr. Paul: You have abandoned your notice.

Mr. Robertson: No; I never abandoned my notice at all.

Mr. Paul: What happened is this, that we have taken the money we have gotten and applied it to the personal property taxes and also gave him credit for his costs. That is what has happened. The form of order doesn't recognize that. I did respond to counsel when he asked me for my comments on the form of order. He just doesn't agree with my method of proceeding.

Mr. Robertson: That is the first time that I ever heard that he even applied anything on the costs, your Honor. This affidavit that he has made in a letter to the Clerk on October 8th last, or a copy of which was sent to the Clerk, I don't recall in that that he ever made any such statement as that. [4]

Mr. Paul: I did respond, and you protested most strongly, too, against my view.

The Court: Well, it will come up on the next motion day, and in the meantime you may file your objections to it.

Mr. Paul: Thank you.

Thereafter on the 10th day of May, 1954, court having convened at 10:00 o'clock a.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; William L. Paul,

Jr., attorney for applicant, and R. E. Robertson, attorney for objectors, both appearing; the following proceedings were had:

Mr. Robertson: Has the Court made any official announcement in No. 6581?

The Court: About a week ago.

Mr. Robertson: Saturday?

The Court: I said about a week ago.

Mr. Robertson: I hadn't been informed of it. Your Honor told me about it personally Saturday morning in your room, but I didn't know—Mr. Lievers told me he hadn't received it.

The Court: Oh; I had in mind another case. That was decided Saturday morning. I don't know why the Clerk didn't notify you.

Mr. Robertson: The way that Mr. Paul sought to apply the costs in that case was overruled; was that it? [5]

The Court: Yes.

Thereafter on the 10th day of May, 1954, court having reconvened at 2:00 o'clock p.m., at Juneau, Alaska; at the conclusion of a hearing in cause No. 6734-A; the Honorable George W. Folta, United States District Judge, presiding; William L. Paul, Jr., attorney for applicant, and R. E. Robertson, attorney for objectors, both appearing; the following proceedings were had:

Mr. Paul: Now, while we are on the subject of Yakutat, your Honor, it appears to me that in the other case we are ready to go ahead. I can state very frankly now for the Court's convenience——

The Court: You mean there is another tax case for Yakutat?

Mr. Paul: It is the other tax case, the first one. As the Court said, the liability of Libby, McNeill & Libby is contingent. I state very frankly that the only evidence I would introduce would be the same page from the assessment book as——

The Court: Well, but I don't understand. What is involved in this other case now?

Mr. Paul: We have got to present some evidence that we can segregate personal property from real property, whereupon we are ready for another order of sale.

The Court: Well, was that case set? [6]

Mr. Paul: No; but I am suggesting that it can be because it is so awfully simple.

Mr. Robertson: If the Court please, I am not coming under that kind of agreement at this time. I had no idea—frankly, I think the case is disposed of—gone. I think they have to devise some other way. The taxes are paid.

The Court: You mean it can't be retried?

Mr. Robertson: I think that is a final decision in that case. Yes, your Honor.

The Court: Why would a reversal be a final decision?

Mr. Robertson: It says the order is entirely void. It doesn't give a right for a new trial. The proceedings were absolutely void.

The Court: Well, I don't remember what the status was of the record there. I don't know

whether he would have to start all over or whether he could proceed from where he did before.

Mr. Paul: I took the Court's Memorandum Decision, handwritten——

The Court: Well, that referred to costs only.

Mr. Paul: But at the same time the Court characterized the liability of Libby, McNeill & Libby as contingent. In other words, now, sometime, why, the contingency could be fixed.

The Court: If the state of the record is such that [7] we can begin from where we began before, but if it is going to require a new assessment roll, why, I don't see how we can.

Mr. Paul: No. Our position then is merely advising the Court that my view of the case is that it will be extremely short and simply introduce this Plaintiff's Exhibit No. 2 that we introduced in this case this morning (referring to cause No. 6734-A).

The Court: I suppose it will have to be set for trial in the usual way.

Mr. Robertson: Well, I don't agree that it can be set for trial, your Honor, but, if Mr. Paul insists on trial, I mean, is going to ask for trial, I would want some time on it, your Honor.

The Court: Well, if you want to oppose it—then, you (Mr. Paul) better move for a retrial, and, if he wants to oppose it, why, he may oppose it.

Thereafter on the 11th day of May, 1954, at 10:00 o'clock a.m., at Juneau, Alaska, before the Honorable George W. Folta, United States District Judge; the applicant appearing by William L. Paul, Jr., its attorney; the objectors appearing by Frederick

Eastaugh, of their attorneys; the following proceedings were had:

Mr. Paul: May it please the Court, I have noticed a motion in No. 6581-A, that is the Yakutat Delinquent Tax Roll for 1948 and 1949, to set the case down for hearing or to [8] perpetuate the evidence of Dorothy Henry. The only evidence that will be perpetuated will be her identification of the assessment roll which she has already identified in another case. We find, however, that she was able to get passage on the airplane and left town at six o'clock this morning, so I think the only thing left of my motion is to have the case set down for hearing. I would suggest two o'clock this afternoon, but in the absence of——

The Court: Well, how are you going to do it without her?

Mr. Paul: We can't. It would have to be sometime whenever the Court returns to the city. I don't suppose it would be possible to do it this week.

Mr. Eastaugh: Your Honor, that is quite another surprise. I am authorized to appear by Mr. Robertson to protest the lack of jurisdiction of the Court to hear this motion. It was served at four o'clock yesterday afternoon. The Court Rules provide for an order of the Court in so-called emergencies. The only emergency was that he has had many months to call this thing up and the emergency occurred sometime yesterday. That is what the emergency is, and serve a motion for a new trial and then admit that there is no more emergency and then have the setting here in the absence of counsel.

I mean, one liberty is taken, and then suddenly it resolves into a further one, and we are protesting it. I think it should be put [9] on the regular motion calendar and called up at the regular time.

The Court: Well, what motion is pending now?

Mr. Paul: To set the case down for hearing.

The Court: You mean there is a formal motion to that effect?

Mr. Eastaugh: It should be called with the other cases.

The Court: Well, as I understand it, you want to object to the motion?

Mr. Eastaugh: He has withdrawn the motion, but he has converted it, your Honor, into a request for setting it at a definite time, in the absence of Mr. Robertson.

The Court: Well, I didn't ask you exactly what he did, but what do you want to do; do you want to object to this motion?

Mr. Eastaugh: I understand the motion is withdrawn, but now he has asked for a setting of the case, and I think that should come up at the regular time.

The Court: Well, that is all that he has asked for in this motion, I take it. That is all he asked for in the motion, so the motion doesn't seem to have been withdrawn.

Mr. Paul: No.

The Court: Now, then, if you want to oppose the motion to set it for trial, why, you may do that. [10]

Mr. Eastaugh: I am not opposing it on that

ground, but I think that it should come up at the regular time.

The Court: Well, you mean you object to hearing the motion for trial then in advance of the regular motion day?

Mr. Eastaugh: Yes, your Honor.

The Court: Well, the Court is going to leave here before the next motion day. As I understand it, the question is whether we can start with the assessment roll or will have to go beyond that. What about that?

Mr. Paul: Go beyond the assessment roll?

The Court: Yes; and start it some place before that.

Mr. Paul: I don't think so, your Honor. We have taken very extensive testimony already, and that is part of the record. The only issue left to satisfy the Court of Appeals would be the evidence of segregation.

The Court: Well, but wouldn't that have to be done in the assessment roll?

Mr. Paul: It is in the assessment roll. The only thing I wanted the witness to identify was the assessment roll.

The Court: Well, if it is in the assessment roll, then why would the Court of Appeals say it wasn't segregated?

Mr. Paul: It was not in the duplicate tax roll. That was the only thing that went up on the record. The assessment roll was not produced in evidence originally.

The Court: Well, wasn't the duplicate identical with [11] the assessment roll?

Mr. Paul: The duplicate delinquent tax roll, no, was not identical in the sense that——

The Court: But it was prepared from the assessment roll?

Mr. Paul: Yes; and——

The Court: Well, then, wouldn't you have to present a new duplicate assessment roll, one that has the items segregated?

Mr. Paul: No. Perhaps we are confusing our terms here. What we present with our application for sale is the duplicate delinquent tax roll. We do not present the assessment roll. In almost all instances I have prepared the duplicate delinquent tax roll.

The Court: Well, regardless of what it is called, it was apparently found deficient. Now, what I am interested in is not in the names of the thing, but how are you going to overcome that objection?

Mr. Paul: Just in the usual assessment roll with those segregations. That is of record, and the same identical page is of record in the case we tried yesterday.

The Court: You mean that the delinquent roll can be just simply ignored then; is that it?

Mr. Paul: Yes. In other words, we look at the whole record, the evidence of all sorts. [12]

The Court: Well, you say that was in the record?

Mr. Paul: No. The assessment roll was not in the record originally; only the duplicate delinquent

tax roll which conforms, in so far as the totals are concerned, with the assessment roll.

The Court: Well, this would be a case where you would supplement the delinquent roll by the assessment roll?

Mr. Paul: Yes, sir.

The Court: Well, I doubt whether any purpose could be served in hearing this motion specially now, but, as I understand it, you want a definite time fixed for trial; is that it?

Mr. Paul: That is all it amounts to, your Honor. We will go ahead and take Mrs. Henry's deposition.

Mr. Eastaugh: Your Honor, I think I should object to setting trial in the absence of opposing counsel.

The Court: Well, if he wants to object to it, he can, but he would have to have some valid grounds because of the time that will be allowed. I was going to set it for the 24th of June.

Mr. Eastaugh: Your Honor, this is tantamount to him having the motion heard this morning. If you set this case today, that is equivalent to him hearing this motion. There is no emergency, your Honor.

Mr. Paul: The Court can do this on its own motion, [13] your Honor. I don't even have to raise it myself.

The Court: I don't see why, unless there is some objection that amounts to something, that it should be interposed.

Mr. Eastaugh: Your Honor, counsel has difficulties in the time element. Now, here is appar-

ently something new all of a sudden cropping up yesterday, of which counsel had absolutely no notice of this matter going on to trial. Then he serves a motion without an order of the Court, which is required by our own local Court Rules, and he calls it for—another reason for objecting to that is he calls it for perpetuating testimony.

The Court: I don't understand what you mean by saying that he serves a motion without an order of the Court. Why would he require an order of the Court?

Mr. Eastaugh: Because the local rules call for it, your Honor.

The Court: What—a motion for trial requires an order of the Court?

Mr. Eastaugh: Yes, your Honor. Any motion requires five days' notice unless an order of the Court is given suspending that five days' notice.

The Court: Well, you mean that you object to what amounts to a hearing of this motion in less than five days without an order of the Court; is that it? [14]

Mr. Eastaugh: Yes.

The Court: Well, but my point is, why raise any such objection? The Court can make an order. Why raise an objection unless it is going to serve some purpose here or it is going to contribute to the administration of justice, in other words, and not be merely obstructive or dilatory.

Mr. Eastaugh: Your Honor, I think that the real thing is here, as the Court knows and Mr. Paul knows, that Mr. Robertson is under a severe

physical handicap and he is hardly able to get around in the mornings, and calls this up at ten o'clock well-knowing that.

Mr. Paul: Oh, I don't know any such a thing.

Mr. Eastaugh: You certainly do.

The Court: Well, but it isn't what his condition is so far as a motion of this kind is concerned. If the Court sets it for the 24th, there will be plenty of time and if he is not in condition then to go to trial or if he is handicapped in some way, he can make a motion for continuance in the usual way; but I don't think that the wheels of this Court ought to stop for any insubstantial reason of that kind; that is the way it would strike me.

Mr. Eastaugh: Well, your Honor, the only point we are raising is that counsel should be required to go through according to the local rules. That is what we are observing, and we expect he should too. [15]

The Court: Well, you may present an order then shortening the time. When the order is presented, the Court will set it for trial on the 24th of June.

Mr. Paul: O.K.

Thereafter on the 13th day of May, 1954, court having convened at 2:00 o'clock p.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; M. E. Monagle, of attorneys for objectors, appearing; the following proceedings were had:

Mr. Monagle: May it please the Court, last Friday In the Matter of the Delinquent Tax Rolls for the City of Yakutat against Libby, McNeill &

Libby, No. 6581-A, the Court denied the objections, and Mr. Robertson prepared an order, and Mr. Paul received a copy of it there.

Thereafter on the 11th day of June, 1954, at 4:00 o'clock p.m., at Anchorage, Alaska, before the Honorable George W. Folta, United States District Judge; the applicant not appearing; the objectors appearing by Raymond Plummer, of their attorneys; the following proceedings were had:

The Court: I suppose we may proceed *ex parte* in view of the fact that your opponent relies on his brief.

Mr. Plummer: Very well, your Honor. If the Court please, this is In the Matter of the Delinquent Tax Rolls for the year 1948-1949 of the City of Yakutat, Cause No. 6581-A in the District Court of Alaska, Division No. 1 at Juneau. [16]

The Court will recall that this matter was heard by the Court at Juneau. The decision was entered and reported in 111 Federal Supplement, page 387. Appeal was taken, and the Circuit Court of Appeals reversed it, and that is reported at 206 Federal 2nd 612. A petition for rehearing was filed by the City of Yakutat. The petition was denied, and in due course of time a mandate was handed down. Subsequently a motion to file the mandate and for judgment on the mandate was filed. There were objections filed by the City of Yakutat to the proposed form of judgment. Those objections were subsequently overruled. A mandate was filed, and subsequently a judgment on the mandate was en-

tered whereby the order of the Court, which had been entered on April 25, 1952, was vacated and set aside, and judgment was entered in favor of the objectors, Libby, McNeill & Libby and Yakutat & Southern Railway, a corporation, against the City of Yakutat in the amount of \$719.94.

Now, it is our contention, your Honor, that that ended the case, that was the final thing to be done, and it was done, and that the proceeding should have stopped at that point. However, I believe that judgment on the mandate was entered on or about May 8, 1954. On May 10, 1954, the attorney for the City of Yakutat filed a motion to set the case for trial or in the alternative to permit the taking of the deposition of the witness Dorothy Henry, and in connection with that [17] motion he moved that the time be shortened so that the motion could be heard on May 11th inasmuch as the Court was departing Juneau. On May 11th the Court granted a motion to shorten the time to May 11th and further ordered that the motion to set the case for trial be allowed and fixed the time for the trial at 10:00 a.m., June 24, 1954. Subsequently objections were filed to the interrogatories in connection with the deposition of Dorothy Henry as a witness, and on May 28th the Libby and the Yakutat & Southern Railway filed objections to the—filed a motion to vacate the order entitled “Order for Shortening Time,” which was the order setting the case for trial. Have you read the motion, your Honor?

The Court: Yes.

Mr. Plummer: Then I will not read the entire motion. In substance it is that the Court was without jurisdiction to set the case for trial on June 24th or at any other time inasmuch as the case was concluded by the entry of the judgment on the mandate, and the motion has been filed to suppress the deposition of Dorothy Henry, the City Clerk of the City of Yakutat.

In connection with the presentation of this matter, your Honor, since the time is limited, I would like to make a relatively brief oral argument and then submit a memorandum of authorities for the Court's consideration.

This proceeding under which the proceedings were had [18] is a special proceedings. It is specifically denominated a special proceedings; for example, in Section 16-1-121 of the Code, 1949, it is provided that "such sale to be made under the special proceedings hereinafter set forth." The Appellate Court in its opinion denominated it, or described the proceeding, as being a "statutory proceeding." This being so, and being a special proceeding for the collection of taxes upon real property, the statutory requirements must be exactly observed. There have been a number of Federal cases cited in support of that proposition, and Mr. Robertson's brief in Cause No. 13455, being the case number of this action on appeal, at pages 67-69.

The delinquent tax roll in a proceeding such as this is the sole pleading or document upon which the municipality's application to enforce the tax

lien by sale of the realty is founded. The entire proceedings is conditioned upon the delinquent tax roll.

Section 16-1-122 of the Code specifically details the requirements of the delinquent tax roll's preparation, contents, certification, filing with the city clerk, notice of preparation and filing with the city clerk, presentation to the District Court, and notice thereof.

Section 16-1-123 specifically details the statutory method of presentation to the District Court and of giving notice thereof. [19]

The duplicate delinquent tax roll that is presented to the Court is the controlling document, not the one on file with the city clerk. Section 16-1-126 provides that the "Clerk to correct original delinquent tax roll and sell property. The clerk of the city shall immediately after the order of sale correct the original delinquent tax roll to correspond in all respects with the delinquent roll as passed upon and allowed by the Court."

Without complying with all of those statutory requirements, the application cannot be allowed. The order of sale, if granted or if denied, is the final judgment. The statute clearly prescribes its finality.

The last subparagraph of Section 16-1-121 of the Code is entitled "Council may enforce lien by sale." It further states, in part, that "such sale shall be by order of the District Court."

Section 16-1-122 of the Code in three instances uses the term "judgment and order of sale."

Section 16-1-123 uses the terms “of notice of application for sale,” and “an order of sale” and “shall by general order direct the several tracts therein described to be sold” and “a certified copy of such order of sale shall be attached” and “shall have the same effect as an order of sale of real estate in a civil action.”

Section 16-1-124 provides for objections to [20] “the granting of the order of sale” and that certain findings “will be sufficient to authorize the issuance of the order of sale.” Section 16-1-124 also uses the term “order of sale.”

Section 16-1-128 of the Code prescribes that the city clerk’s certificate of sale shall contain “the date of the order of sale and the court issuing the same.”

Section 16-1-130 of the Code prescribes that the tax deed shall contain “the date of the order of the sale and the court issuing the same.”

The finality of the order of sale is clearly declared by the statute creating this special proceedings. Moreover, the Appellate Court in this proceedings on appeal treated and considered the trial court’s order of sale as a final order or judgment. The Appellate Court having held that no part of the trial court’s order of sale can stand, and having reversed that order, nothing more is to be done in this proceedings other than for the trial court to obey the Appellate Court’s opinion and mandate. It cannot legally do anything else or more. It has no duty, nor can it legally attempt, to construe the Appellate Court’s opinion and mandate in any other

manner, nor can it now allow the municipality to attempt to amend the duplicate delinquent tax roll upon which both the trial and the Appellate Court's decisions were based or to introduce any new or newly discovered evidence, nor has this Court any jurisdiction to admit further evidence. The municipality had its [21] opportunity at the original trial to prove its defenses to the objectors' objections. All the evidence both pro and con was before this Court and the Appellate Court. A trial has been had thereon. This Court cannot now admit further evidence in support of, or in defense of, those objections.

Evidently by the deposition that the municipality proposes to take of present City Clerk Henry it proposes to introduce further evidence, not even newly-discovered evidence, in an attempt to prove that the taxes, interest and penalty can be separately segregated as to real and personal property taxes, so as to overcome the Appellate Court's finding: "Since there is nothing in the record to indicate, and no basis for a presumption that the realty was properly assessed, or, if properly assessed, that any specific amount of taxes thereon is unpaid, the City has made no case against appellants." The evidence, the production whereof is the objective of that deposition, has been before both the trial and the appellate courts. It was set out in same form on page 148 of the Printed Record on Appeal. Moreover, the City in its petition for rehearing before the Appellate Court, which petition was denied, specifically directed that Court's attention

to that and other pages of the Printed Record on Appeal, showing that same kind of evidence.

On page 8 of that petition the City said, "But the record is replete with evidence from which the Court could make [22] findings. Pages 117 to 126, 131, 134, 137, 147 to 149, then 152 to 155, 162, and following. We respectfully urge that the case be remanded for the entry"—and quoting from the petition—"We respectfully urge that the case be remanded for the entry of findings on the amount of taxes assessed on the real and personal property, respectively, and that an order of sale be issued as to the real property."

Despite the Appellate Court's denial of a rehearing with that evidence in the record before it, the trial court has granted a retrial and seemingly intends to permit the City to put in that very evidence to prove that the taxes, interest, and penalty can be separately computed upon the real and personal property, not from the delinquent tax roll but from other evidence which either in form or substance was before both the trial court and the Appellate Court when they made their respective decisions, and which does not appear in the delinquent tax roll upon which the statute requires the granting or the denial of the order of sale to be based.

The applicant City now intends to present evidence, actually evidence already before both this and the Appellate Court; but, even if newly discovered, it would be immaterial to prove that the Appellate Court was incorrect when it said in its

opinion: "The difficulty, however, is that the amount of taxes, penalty and interest due upon the realty alone is not shown in the record. If the amount was separately stated in [23] the delinquent tax roll filed by the City with its application for order of sale, it would be presumed that the realty was properly assessed and that the amount stated remains unpaid. Alaska Compiled Laws Annotated, 1949, Section 16-1-124. But the taxes due upon the realty and personalty were 'lumped' and stated in a single amount. This is the same as no statement at all, since there is no basis for allocating any part of the amount stated to the realty. If the realty and personalty of appellants were ever separately assessed, as the statute requires, that fact does not appear in the record."

Even if the Appellate Court was mistaken in finding that the record did not disclose such separate assessment, and the City in its petition for rehearing, page 8, contended that that fact was shown by the pages, which I have previously mentioned in arguing, of the Printed Appeal Record, yet it could not correct its mistake now and recall its mandate because the term at which it issued its mandate has expired. It heard the appeal in April, 1953, at its Seattle term commencing the second Monday in September, 1952, and rendered its opinion and issued its mandate at its San Francisco term commencing the first Monday in October, 1952, which term expired prior to the first Monday in October, 1953, which is the San Francisco term now in session, citing Rule 3 of the United States Cir-

cuit Court of Appeals, Rule for the Ninth Circuit Court of Appeals.

Objectors do not concede that the Appellate Court made [24] any such mistake, but, to the contrary, it based its opinion and mandate, as the statute required, upon the delinquent tax roll that was filed by the City with its application for order of sale. Numerous decisions hold that the United States Courts of Appeal cannot recall a mandate after the term has expired at which it was issued. Nor does the command in the mandate, that is, and I quote, "You, therefore, are hereby commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding," authorize or empower, either directly or indirectly, the trial court to do something which the Appellate Court itself cannot do, that is, to correct that mandate, even had, which objectors do not concede, the Appellate Court made a mistake in its issuance, nor to do anything further in this proceeding than to enter its judgment upon the Appellate Court's mandate in accordance with that mandate, inasmuch as trial has been had upon all the issues in this proceeding. There are many U. S. Supreme Court cases cited in support of that proposition in the memorandum of authorities which I will furnish to the Court.

The language of that command does not instruct the trial court to hold a new or another trial or to admit further evidence or to do anything other

than to set aside its Order of Sale of April 25, 1952, and to take the costs against the [25] City. When this Court entered its judgment on the mandate on May 8, 1954, it performed its full duty, and nothing further remains or can be legally done in this proceeding, except such actions as may be necessary to enforce objectors' costs.

The delinquent tax roll has been presented both this and the Appellate Court, and the latter Court has held that under it no order of sale can be entered by this Court. Nothing further remains to be tried or decided. The judgment upon the mandate is a final order or judgment, other than it is not appealable because second appeals are not allowable, just as this Court's Order of Sale of April 25, 1952, was final until the Appellate Court reversed it, and just as this Court's order denying the sale would have been had this Court, at the conclusion of the trial before it, properly entered an order on April 25, 1952, denying the application to sell.

Now, if the Court please, upon the basis of the oral argument made and the memorandum of authorities, which I will submit to the Court, we feel that the objectors' motion to vacate, the order, entitled "Order Shortening Time," should be vacated and that the case should not be set for trial on the 24th of this month. And, while I know the Court is busy with other matters, Mr. Robertson referred this matter to me and asked me to urge the Court to give this matter the Court's full consideration

and thereafter render a decision as promptly as possible. [26]

At this time I would like to forward to the Court a memorandum of authorities supporting the oral argument. There are several cases too that I recall distinctly where the wording of the mandate involved in those cases was quite similar, not identical, with the mandate of the Ninth Circuit Court of Appeals in this case.

The Court: Well, what interests me and what your argument is entirely silent on is the question whether your contention is that a proceeding would have to be begun anew or whether, in other words, you contend that they could not go back of the delinquent tax roll or would have to not only start anew but that they could not start with a new delinquent tax roll. Now, it seems to me that is the crucial question here. These other questions are only incidental.

Mr. Plummer: I think it is our position, your Honor, that the matter is now *res adjudicata*.

The Court: Well, but where are the authorities on that? I didn't hear you cite any authorities on it.

Mr. Plummer: I think there are authorities to that effect in the memorandum, your Honor.

The Court: I listened for them. I didn't hear them.

Mr. Plummer: No. I mean in the legal memorandum that I am handing you now.

The Court: Well, did you examine those authorities?

Mr. Plummer: I read Mr. Robertson's [27] brief.

The Court: It just seems to me that it presents the proposition that there can be no such thing as a new trial, except from the very beginning. Now, the first matter that occurs to the Court is, why should the City start from the beginning again, duplicate the evidence? Why can't they start with a new delinquent tax roll if in fact the tax records of the City are in such shape that a new delinquent tax roll, showing either only the real property or showing the segregation of both, can be prepared? In other words, what authority is there that requires the City of Yakutat now to start all over? That is what I am interested in. I think that is the kind of authority that would govern, and I certainly am opposed to doing anything such as merely duplicating legal proceedings. I think that the disposition and trend has been to avoid duplication, not only of work but of expense, and I certainly would be loath to hold otherwise, and that is why I inquired whether there are authorities that would seem to require that this proceeding be begun anew. It is difficult for me to believe that there could be any such authorities.

Mr. Plummer: The only authorities that I have are those presented by Mr. Robertson, and I don't know if they touch on that question.

The Court: I am not interested in the other authorities. If he hasn't submitted authorities on that proposition, I will have to conclude that there

aren't any and rule against [28] him because, as I say, it just makes no sense to start all over merely for the sake of starting all over again. There ought to be more reason than that, even in law, which is absurd enough already. It has enough absurdities in it without adding to them. Well, I will take the matter under advisement.

Thereafter on the 24th day of June, 1954, court having convened at 9:50 o'clock a.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; the applicant appearing by William L. Paul, Jr., its attorney; the objectors appearing by R. E. Robertson, their attorney; the following proceedings were had:

The Court: Have we something else to come up at this time?

The Clerk: The other one.

Mr. Paul: No. 6581-A.

The Clerk: This is In the Matter of the Delinquent Tax Rolls for 1948 and 1949 of Yakutat.

Mr. Paul: I take the position, your Honor, that this is a partial new trial. The Court of Appeals, I think, has very well defined the issue on whether a segregation can be shown. It is our position, when the Court of Appeals reversed the order, that entitled us automatically to a new trial. In the previous decision in this court in the 1949 Case the Court found against us on the 1948 tax roll; we are not renewing that. [29]

The Court: Well, you mean the Appellate Court found against you?

Mr. Paul: No. Your Honor did—1948.

The Court: 1948. --

Mr. Paul: So, the only issue left is the 1949 roll and the Court of Appeals finding whether segregation could be made, and at this time we are offering to introduce only evidence of segregation.

The Court: Well, but the question that occurs to me is whether you can proceed from the, or start from the former delinquent tax roll.

Mr. Paul: I filed an amended one, your Honor.

Mr. Robertson: If your Honor please, I don't consent or agree that the Court has any authority or jurisdiction to hold this hearing at this time or at any future time, and, in accordance with the Court's Memorandum or minute order which was entered after Mr. Plummer submitted this matter to the Court on my behalf on June 11th, I renew my motions at this time to vacate the order shortening the time, wherein it was, trial was set at this date, also the motion to suppress the deposition of Dorothy Henry, and also my objections to the notice of the taking and to the direct interrogatories to her, and also my objections to applicant's motion to strike certain portions of the printed record, and I renew all those motions, your Honor. [30]

The day before yesterday after talking with Mr. Paul over the telephone, and I told him that I was anxious to get these records down because I couldn't tell under the Court's minute order whether or not you were going to have a hearing at this time or not, and I didn't know what to do about preparing for a trial, so I served Mr. Paul a demand for production of all the City records and I also sent it

over to Yakutat and had it personally served upon Dorothy Henry, the City Clerk, and at that time in the conversation with me over the telephone Mr. Paul agreed with me that he would produce all those records, and he said he would put it in writing, so I wrote him a letter, which he confirmed, and he gave it back to me in person, and at that time he told me, and I believe he will corroborate my statement, that he intended to stand at this hearing upon the deposition of Dorothy Henry, that they didn't have any delinquent tax roll.

Yesterday afternoon about 2:45 he brought me in what he calls an amended, supplemental, duplicate delinquent tax roll, which is made out by himself, signed on behalf of Dorothy Henry, Clerk, by himself as City Attorney. I have prepared and I submit herewith and I file now a motion to strike that amended, supplemental, delinquent tax roll, and I also, in addition to my objections set out in my motion, I make to it all the objections that I made to the duplicate delinquent tax roll that was the subject and basis of this Court's order of [31] sale of April 15, 1952, and I feel that that is not a new duplicate delinquent tax roll. Of his own self, as an attorney, he just simply has made up, as I view it, what he thinks is the way you ought to compute these claimed taxes, penalty and interest.

The Court: Well, as I understand it, your position is that he would have to start as though there never had been a delinquent tax roll.

Mr. Robertson: That is correct, your Honor;

yes, sir. And I had Miss Maynard make me a transcript of the proceedings had by you where Mr. Plummer appeared, and in it you asked for authorities or said what you were interested in was authorities on the question of the necessity of the City having to start over again in these proceedings. While I thought, your Honor, in principle the authorities I submitted with that memorandum at that time, and which I didn't serve upon Mr. Paul because I didn't realize—I didn't send it over to Mr. Plummer with the idea of actually filing it; I just sent it for him as an aid, but he told me later that you asked him to file it; so, I now give Mr. Paul a copy. While I thought in principle the authorities I cited already covered that point, I have worked diligently and believe I have some further authorities that specifically support it. I don't mean to say I have found any Alaskan case that says you must go out and start a new one, but I believe the authorities I have found [32] here support that contention, your Honor, and I submit those. I put those new authorities right in where I renew my objections, your Honor.

Mr. Paul: May it please the Court, I have already given the Court the editorial authorities that follow the general rules that upon an unqualified reversal by an Appellate Court the case automatically comes back for a new trial, so in that view we don't have to——

The Court: Well, but it just strikes me that about the only kind of cases to which that rule applies is where error was committed in the trial, not

where the basic pleadings or what serves in the nature of a basic pleading or the purpose of a basic pleading is found deficient. Now, for instance, the situation would be somewhat analogous if a complaint were found deficient. Obviously, there would have to be, the complaint would have to be amended before you could start a new trial.

Mr. Paul: Right.

The Court: But the trouble is that this is not that kind of proceeding because, if you look upon the delinquent tax roll as a pleading, and I think it would have to be so looked upon in this case, then there are certain steps that have to be taken in connection with it, the steps that are set forth in the statute, and I don't see how you can meet those requirements of taking those steps by merely amending a [33] delinquent tax roll. In that respect it differs radically from a deficient complaint or deficient indictment or deficient information.

Mr. Paul: Well, your Honor, this volume, or the equivalent of it, was before the Court of Appeals. It saw the same delinquent tax roll that we are now considering. It didn't take any such view, that it would depend exclusively upon the delinquent tax roll itself in order to try to reach a decision. It looked at the entire book. Now, that is all we are doing here. We are supplying what the Court of Appeals couldn't find when it looked over the whole book.

The Court: Well, you mean the Court couldn't find any evidence of segregation?

Mr. Paul: That is right. Now, if we had had in

the record, if we had the evidence which I am offering now, the evidence of the City Clerk, consisting of the assessment roll which does show segregation, then the Court of Appeals would have found in favor of the City, not exclusively upon the delinquent tax roll but from the entire record, and there is no other conclusion, that I can see, that you can draw from the actions of the Court of Appeals. I look upon the tender of the amended, supplemental, delinquent tax roll that I filed yesterday as being merely an amended complaint for the assistance of the Court in drawing up an order. That is all.

The Court: Well, now, let's look at it this [34] way. Suppose that the question before the Appellate Court was the sufficiency of an indictment and the Appellate Court had said during the course of its opinion that, if the defendant had demanded a bill of particulars and one had been furnished, the defect in the indictment had been cured. Now, it seems to me it would be a similar situation. Now, then, upon reversal I should think that you would have to start with a new indictment, but that might not be conclusive upon the questions that are presented here. As I understand it, if I recall the Appellate Court's opinion or its scope, it merely dealt with that one question as to the omission to segregate.

Mr. Paul: Well, it went into that, and in trying to save the proceeding——

The Court: Well, your position now is that these steps, that are set forth in the statute that must be taken with reference to the preparation

and the presentation of the delinquent tax roll, need not be taken in the case of an amended tax roll? That is the thing I am in doubt about.

Mr. Paul: Yes, I think so, your Honor. After all, the parties are before the Court. There is no difficulty about locating the property. We know where that is. The evidence is replete.

The Court: Well, then, your position is that the objectors could not be prejudiced by not taking these steps but proceeding from an amended tax roll. [35]

Mr. Paul: I think that that is the sense of the opinion of the Court of Appeals. They tried to do just what I am asking this Court to do. They didn't even feel that an amended delinquent tax roll was necessary at all.

The Court: Well, if they could gather the missing material from the record.

Mr. Paul: From the record. Now we come back and I am offering the additional material. Strictly speaking, I don't think that an amended delinquent tax roll is necessary. I only tendered it with the view of assisting the Court in making its computation.

The Court: Well, you say you don't think it is necessary. Your position is that there is enough in the record?

Mr. Paul: Yes.

The Court: Why is it that the Court of Appeals held it wasn't there?

Mr. Paul: Well, I mean we have supplied the

deficiency by taking the deposition of Dorothy Henry.

The Court: You mean the record as subsequently made up, not the one presented to the Court of Appeals?

Mr. Paul: Yes.

The Court: Well, now do counsel wish to argue these numerous objections and motions?

Mr. Robertson: I have covered that point also, your Honor, about Dorothy Henry's deposition, and I called your [36] Honor's attention to the fact that, in that matter that Mr. Plummer submitted for me up at Anchorage, that that very evidence of Dorothy Henry's, except it only went to the year 1948, was before the Circuit Court of Appeals on the appeal. It set out on Page 148 of the printed record, I set it out in my letter of November 13, 1948, to the City of Yakutat, and Mr. Fred Paul in his petition for rehearing in that case at Page 8 specifically called the Appellate Court's attention to that paging because on his presentation for rehearing, which was denied, he called attention to what appeared in the record on Pages 147 to 149 of the printed record, and that is right where that is contained, on those pages there, so it was before the Circuit Court, the same sort of evidence exactly, and I have covered that particular evidence, and I don't believe you can find a case, your Honor, that permits evidence to modify, amend or impeach a duplicate delinquent tax roll, and that is what they are trying to do now. They are now trying to say "the duplicate delinquent tax roll before this Court

wasn't correct, therefore, we will show it by Dorothy Henry's deposition and what it consists of, "and, except it was for the year 1948, as a matter of fact the year 1948, these same figures, if I am not mistaken, appear right in this evidence, this document that was produced by Dorothy Henry's deposition, and of course I filed motions or objections to Dorothy Henry's deposition. I also filed a motion to suppress the deposition, and I have supported [37] it by authorities in my brief.

The Court: I think you have already stated your position. Your position is that they have to start all over.

Mr. Robertson: That is it exactly.

The Court: But why?

Mr. Robertson: Well, because, your Honor, for one reason, that the statute governs this affair.

The Court: You mean the provisions with reference to the preparation of a tax roll?

Mr. Robertson: Yes, your Honor.

The Court: But how would anybody here be prejudiced since those steps had already been taken except as to the segregation of the property? How would anybody be prejudiced?

Mr. Robertson: I will tell you why, your Honor. After all, these are substantial rights. They are trying to get a tax lien on one of these objectors' properties, the Yakutat & Southern Railway property, and sell that property and put it up for sale to satisfy liens, and I submit that is a substantial right, and we don't stand here in the position of

where we didn't pay our taxes. We paid promptly years ago. We paid the taxes on which we claimed was the actual value of the property. Now, when they come in and try to make us pay more taxes than that and don't comply with the statute and are going to sell our property, I submit we are prejudiced by it. They have got to follow the statute. There isn't any question [38] about it.

The Court: Well, stated that way there is no doubt about that, but——

Mr. Robertson: That establishes substantial rights, and we are being prejudiced by it.

The Court: Well certainly, but, where those steps had already been taken but one detail was omitted, such as segregation, then why do you say they have to take those steps again?

Mr. Robertson: Because all of this is under the statute, and the authorities all hold that the only people that can make any changes in the duplicate delinquent tax roll are those authorized by statute, and bring in the testimony of what you assess them to agree with the assessment in an entirely different book isn't making the correction on the duplicate delinquent tax roll by those who are entitled to make it or authorized to make it. There is no authority for them to do it, no statutory authority. We have a right to stand on our statutory rights. That is a prejudice to our substantial rights to not be able to rely on the statute. We can't rely in this case either on the statute or Mr. Paul's view of the statute or on their own ordinances. They don't have to do either one. And I submit to your Honor that

in the Appellate Court's decision, when they spoke rather sympathetically about the small Town of Yakutat, that was probably my fault in not [39] having in my brief explained to the Appellate Court that the Town of Yakutat has had a practicing lawyer representing them as city attorney throughout all these proceedings. They apparently thought that I, as a lawyer, or somebody was trying to take some advantage of the Town of Yakutat. I submit the Town of Yakutat stands in the same position in this case as Libby does. They have had a practicing lawyer in this court representing them and have had throughout, and Yakutat, just because it happens to be a small, little village, they are trying to charge unfair and unreasonable taxes against my clients.

I have endeavored to cover those matters, your Honor, and, while I have submitted them in writing to your Honor, I don't know that I have anything more orally to say. If the Court should refuse to grant my motion to strike what he calls the amended, supplemental, duplicate delinquent tax roll, then, your Honor, I want to make a motion for a continuance because I have to get some—the only way with these books down here—after Mr. Paul told me he was just going to rely on Mrs. Henry's deposition, I finally reached the conclusion that I couldn't use the books to any advantage, but, while I can go through the books, I have nobody here to testify. It would be a simple thing to say, "let the Court do it or the reporter or somebody" that there

isn't any such thing in there. I am submitting to you that those books will corroborate my statement about what they don't show. They are now, as I understand it, [40] all the official records of the Town of Yakutat. Is that correct?

Mr. Paul: That is what they asked for, and that is what we produced, and I just brought them over to the Clerk. I think maybe counsel is taking the narrowest view of what evidence I am offering at this time. That is why I asked the Court to begin with, "What kind of proceeding are we in; an entirely new trial, or a partial new trial?" If it is a partial new trial, which is my view, then we use all the evidence we used before in No. 6581-A, and I present and I offer in evidence at this time only the additional evidence of the deposition of Dorothy Henry.

The Court: Well, he says that that was before the Court before, before the Appellate Court.

Mr. Paul: The deposition of Dorothy Henry——

The Court: The evidence contained in the deposition. What about that?

Mr. Paul: Well, if you assume that, your Honor, the whole opinion of the Court of Appeals becomes nonsense.

The Court: Well, he gave the page number of the record—148.

Mr. Paul: Well, but he says at the same time that the 1948, and all that was before the Court of Appeals was the 1949 roll. Nobody appealed the 1948 roll.

The Court: Well, I didn't know that he was

limiting [41] his argument to 1948. He said it was on Page 148 of the printed record.

Mr. Paul: Yes. Well, that is a letter beginning on Page 147, by Mr. Robertson, dated November 13, 1948. It concerns only the 1948 roll.

The Court: Well, I thought the appeal dealt with the 1950 and 1951 taxes.

Mr. Paul: No.

Mr. Robertson: 1948-1949, your Honor.

Mr. Paul: No. 6581-A was the 1949 roll. Well, if you assume that this letter dated November 13, 1948, does contain evidence of segregation, why, then the opinion of the Court of Appeals is just sheer nonsense, because it says that they couldn't find any evidence of segregation.

The Court: Well, you say, assuming that it does contain that. Why would you have to assume it? If it is there, it either contains it or it doesn't.

Mr. Paul: Well, that is Mr. Robertson's assumption. It is not mine.

The Court: You mean you disagree over what is set forth on Page 148?

Mr. Paul: I disagree that it affects 1949. In other words, I agree with the Court of Appeals.

The Court: Well, then, as to case No. 6581-A, as I understand it, you disagree over whether these statutory steps, [42] relating to the preparation of the roll and presentation, must be taken. Isn't that the, isn't your disagreement limited to those, or to that question, rather? As I understand it, you two disagree over whether the statutory steps, relating to the preparation and presentation of the roll,

must be taken. In other words, you disagree over where the starting point is.

Mr. Robertson: I think we disagree as to that, and we also disagree as to the admissibility of this Dorothy Henry deposition, both in law and in fact, and of course I also still stand on my renewing my motion to vacate the order setting the trial on those same grounds.

The Court: Well, but what isn't clear to me is, assuming now that he was starting with another delinquent tax roll and he was about to take all the statutory steps or intended to take all the statutory steps, why would the deposition of Dorothy Henry or her testimony be inadmissible?

Mr. Robertson: Why what?

The Court: I say, why would her testimony be inadmissible?

Mr. Robertson: Well, because, after a delinquent tax roll is made up, and then they brought it in, then they couldn't testify——

The Court: Well, that is what I am trying to find out. You say it is inadmissible because it is subsequent to the preparation of the roll? [43]

Mr. Robertson: Yes, your Honor. The roll itself is conclusive.

Mr. Paul: I think the Court states our various disagreements. I wish to—I don't wish to give the Court the impression that I have abandoned my motion to strike portions of the objectors' testimony. There was quite a bit of testimony given about the valuation of property. The basis of the

motion is that the objectors did not appear before the Board of Equalization and offer evidence.

The Court: Well, now, let me understand this. I don't have a clear recollection of it. Your motion was to strike testimony given in what proceeding?

Mr. Paul: In No. 6581, the 1949 tax roll case.

The Court: And the testimony had been admitted by what; by stipulation, or what?

Mr. Paul: No. It just came in. I was not making any objection at that time, but in place of that I——

The Court: Well, by deposition or oral testimony?

Mr. Paul: Oral testimony.

The Court: Whose testimony was it?

Mr. Paul: Of the objectors. All of his witnesses.

The Court: Well, your point is that that should be stricken because it was not presented to the Board of Equalization. Is that it?

Mr. Paul: Not only that that evidence was not presented [44] but no evidence whatsoever was presented to the Board of Equalization, but only a naked claim.

The Court: That the valuations were excessive?

Mr. Paul: Yes. And the objectors having not exhausted their administrative remedy and there being no issue of fraud raised by the objectors, this Court has no power to modify——

The Court: Well, it wouldn't be of any particular importance anyhow because in these cases that are tried without a jury the Appellate Court con-

cerns itself with only one question, whether the evidence that was admissible is sufficient, not whether there was some inadmissible evidence also taken or admitted. It isn't of much importance one way or another.

Mr. Paul: Well, I understand your Honor's position. What I am in reality doing is raising a new legal issue. That is what I am doing. The new legal issue is that the objectors did not exhaust their administrative remedy, and, therefore, they have no standing before this Court at all.

The Court: You mean standing on some particular point or on the whole case?

Mr. Paul. On the whole case. They did not appear and present evidence to the Board of Equalization as they are required to do. Instead they just sent this letter, which is a bare, naked claim, and made no evidence themselves whatsoever. [45]

The Court: Well, but you could make that contention without any motion to strike.

Mr. Paul: Well, it is just one way of calling it to the Court's attention, is all.

Mr. Robertson: Well, I filed, out of an abundance of precaution, your Honor, I filed objections to that motion which is on file, your Honor, and of course under that theory, as I view it, why, if the Board valued the property over there at, assessed the property at a million dollars that was only worth a hundred thousand, if you didn't actually go in front of the Board personally, according to Mr. Paul's theory, why, there wouldn't be any fraud involved and it wouldn't be overvalued or overas-

sessed, and I submit that is not the law at all.

The Court: Well, but, if there was no complaint made before the Board of Equalization of excessive valuation, I should think that you would be precluded from making that point before the Court.

Mr. Robertson: It was made before the Board, your Honor, specifically made. In fact I was in contact with Mr. Paul, with a view here of two lawyers about it, too, and the city, I wrote letters to them about it. They knew that we claimed that it was excessive.

The Court: Well, then, the point boils down to this, that, while the objectors objected on the ground of excessive [46] valuation, they didn't produce testimony in support of it; is that your view?

Mr. Paul: They just said "the valuation is excessive and we believe it is this amount," a different amount. That is in essence what it amounted to.

Mr. Robertson: Well, his point entirely is that you necessarily have got to make an appearance before a common council in order to let them know that their valuation is excessive. We let the Board know. They were informed in writing, which is much better than orally.

The Court: Well, but his point is that you should have followed it up by submitting evidence of overvaluation.

Mr. Robertson: We did. We told them it was overvalued and everything else, your Honor.

The Court: Well, you told them it was overvalued, but did you follow it up by submitting evidence to prove that it was overvalued?

Mr. Robertson: Well, we submitted it the best way we could.

The Court: Well, did you submit it in the way you did before this Court?

Mr. Robertson: No; we didn't take any depositions and put over there or anything else. We filed our returns and also supported it and told them that it was overvalued.

The Court: Well, then, it seems to me that [47] the question becomes one of what obligation or duty rests on an objector before a board of equalization. That is the real question.

Mr. Paul: That is defined in the statutes and the ordinance, your Honor—two methods, either a personal appearance and testifying under oath or an appearance by affidavit, presenting evidence, not conflicting claims. All we got was the letter.

Mr. Robertson: That evades entirely the question that the delinquent tax roll is defective also. That is then evading the question of the effectiveness of the delinquent tax roll and of the illegal attempt to now cure it without any evidence and by counsel's coming in here and making what is no more than a letter as far as he is concerned. I don't think he is authorized to make that.

The Court: Well, it seems to me that there should be some authority on the question, where upon a reversal for a deficient tax roll, what the procedure should be.

Mr. Robertson: Well, I have not been able to find that particular thing, your Honor. I have

looked through everything, except I had some sections on Cooley on Taxation, but I haven't looked through it. As a matter of fact, I even had a hard time finding anything in the texts or anything else, the words "delinquent tax roll," but I finally located one where they used the words "delinquent tax roll," but I hunted [48] high and low even to find that any place.

The Court: Well, then, it looks like Yakutat is the only one that ever made that omission.

Mr. Robertson: I don't know where they got the law from. I wonder if we could leave those books here temporarily, Mr. Paul?

Mr. Paul: Well, they will notify me when they need them.

The Court: Well, then, as I understand it, counsel submit both cases on the statements that have been made here this morning and on the motions that——

Mr. Robertson: And on my briefs, your Honor.

The Court: ——have been filed, and objections.

Thereafter on the 29th day of June 1954, court having convened at 1:30 o'clock p.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; the applicant appearing by William L. Paul, Jr., its attorney; the objectors appearing by R. E. Robertson, their attorney; the following proceedings were had:

Mr. Robertson: In the objections to No. 6581-A, I feel, your Honor, that there is little that I can

add to the oral argument that I have heretofore submitted to the Court in these tax proceedings and also the written authorities, but I take the position, your Honor, for one thing, that whatever was held on the 24th of this month that—I admit I don't know [49] whether, if the Court considered it as having a hearing on the tax roll; I don't know whether you were having a hearing on the 1949 tax roll that was before this Court at the hearing in January, 1952, or for the supplemental, amended, duplicate delinquent tax roll that Mr. Paul himself submitted; but I submit that the record will show that I stated to the Court at the outset there that, if the Court overruled my motion to vacate the order shortening time, of May 11, 1954, and also my motion to suppress the Dorothy Henry deposition, that I would have to have time because I would have to have evidence and I wanted to introduce evidence to show that the City had not complied with either the statutory provisions of Sections 16-1-121 to 130, or in regard to the duplicate 1949 tax roll before the Court at the hearing in January, 1952, and have not complied with those sections or statutory provisions or with their own tax ordinances in regard to this purported, amended, supplemental, duplicate delinquent tax roll, and I think the record will show, that Miss Maynard's notes will show, that I made that statement to the Court at that time, when it came on, and the order of sale of course is going ahead on the theory that we had an entire hearing. I simply call that to the Court's attention.

Furthermore, this order of sale now is largely based, at least the Court said so, upon what I contend—I don't admit it is a defense, your Honor; I contend that this doesn't come [50] into that administrative board doctrine which Mr. Paul quoted to you from American Jurisprudence; and that, furthermore, the statute specifically provides in this case that the Court itself is the final arbiter of whether or not property is overassessed or overvalued for tax purposes. It doesn't make any difference whether we made any appearance before the Board; and that I didn't admit here that we didn't make any appearance of any kind before the Board. And with that I simply submit my written objections to it, your Honor, because I have argued so much on this and have had so many written briefs, and I don't see any reason to add to it.

The Court: Well, I can't agree that a taxpayer can come before the Court on a proceeding of this kind and make an objection as to valuation which he had not made to the Board of Equalization, so I will have to adhere to my former ruling, but, so far as this showing, or, rather, being given an opportunity to make the showing that you mentioned in the latest objection, as a matter of fact, I had forgotten that. It seems to me that you would be entitled to such an opportunity, but I am wondering whether you want merely to have the showing heretofore made considered as having been made on this later proceeding or whether you want to present something else than you have already presented in the way of objection. Now, if all you want to do

is to be given the opportunity to present the objection that you have done on the previous occasions, it [51] seems to me that you and counsel ought to be able to agree that the showing then made can be considered on this proceeding.

Mr. Robertson: Well, of course, if Mr. Paul admits the verity of my objections, not the validity of them but the verity of them, why, of course, that would serve the purpose; but I don't know just what—a person comes in—and I make objections, and, while there is no denial of the objections, so far as I know, other than Mr. Paul claims they are not valid, but, if they are admitted as a fact, then of course I would have all the evidence before you; but, as it is now, I have no evidence whatever that they didn't comply with the statute or the ordinances in regard to this amended, supplemental, duplicate delinquent tax roll that Mr. Paul prepared and signed on behalf of the City. I would have to take evidence or probably a deposition of, I presume, the City Clerk or somebody to prove that there wasn't any compliance, unless he admits it.

The Court: Well, then, as I understand it, the evidence you want to introduce in support of these latest objections is evidence that had not been previously introduced; is that it? If it has been previously introduced——

Mr. Robertson: I haven't had an opportunity to put in any evidence on that, your Honor.

The Court: But my question is whether, if all you [52] want to do is duplicate what has been

done before, I don't know why the Court couldn't consider it as evidence in this case.

Mr. Paul: As to that, your Honor, the evidence was introduced, your Honor. All evidence introduced in the previous case, except that relating to valuation, to which I filed a motion to strike, I regard as part of this case.

The Court: Well, let the record show then that the evidence heretofore introduced in support of objections such as are made on this particular proceedings upon the so-called supplemental or amended tax roll may be considered in support of objections presently made. That will serve your purpose, will it not?

Mr. Robertson: Yes. But I can't agree with the motion to strike the valuation. If the Court strikes from the printed record my valuations proved at the hearing in January, 1952, I can't come in here myself and prove that. I would have to take evidence of it, your Honor.

The Court: I don't quite understand you. What is it that you now say the Court has stricken?

Mr. Robertson: I don't say the Court has stricken anything, but Mr. Paul is referring to his motion, which I filed objections to, his motion to strike—of course he just made it to the printed record—but to strike that portion of the printed record in which I proved valuations.

The Court: You mean before the Court? [53]

Mr. Robertson: The January, 1952, hearing; yes, your Honor.

The Court: Well, I don't know that I granted any such motion.

Mr. Robertson: I say, I don't know whether your Honor has or not.

The Court: Well, I am sure I haven't.

Mr. Robertson: It is before the Court, and Mr. Paul argued here the other day. He argued in the form that I made objections to it, and then he was arguing against my objections to it.

The Court: I don't recall having made an order that would exclude that, and, if I have, why, I would—I will make a further order to vacate so much of that order as would exclude that evidence, and permit you to have it considered on this proceeding.

Mr. Robertson: Very well, your Honor.

Mr. Paul: Then how would that balance up with the Court's memorandum decision, which the Court, I think, in substance repeated here a few minutes ago, that evidence of valuation not presented to the Board cannot be considered by this Court?

The Court: Well, I don't see how that would be affected. The fact that the Court holds that some evidence is inadmissible in a proceeding doesn't preclude the appellant [54] from getting a review of it.

Mr. Paul: Well, naturally, your Honor, but——

The Court: Well, that is all, as I understand it, that he wants. He wants to urge the point that he introduced this evidence, such as it is, before the Board of Equalization and that my failure to con-

sider it was error. There is no reason why he shouldn't be allowed to a review of that.

Mr. Paul: Yes; that is correct. Now, we do not retreat from the position, your Honor, that the only request for a delay in producing evidence was based upon objections that the objectors made to the deposition of Dorothy Henry. The Court considered those objections in Yakutat—I mean, in Anchorage—and overruled the objections, and there was no stay that was granted to him to give him more time, and he should have been fully prepared to go to trial and produce all the records and all the evidence he wanted on June 24th. As I say, I am willing to accommodate counsel and let the entire record, but I don't—

The Court: Well, I don't pretend to remember the numerous objections and steps taken here but I do not recall that I ever intended to foreclose counsel from presenting or from obtaining time to present his particular evidence. But what difference does it make if he is allowed now by this latest ruling of the Court to have the evidence, previously introduced, considered on this hearing? It doesn't make any [55] difference.

Mr. Paul: I think I have accommodated counsel to the fullest extent on his evidence.

Mr. Robertson: As I understand, your Honor, it is now so considered by your Honor.

The Court: Yes.

Mr. Robertson: Very well.

Mr. Paul: Is the Court at this time signing the orders of sale?

The Court: Yes.

Mr. Robertson: I would like to ask, since the Court will probably be gone before I can get it, I would like to ask Mr. Paul about a supersedeas bond; in No. 6581-A I think a four-thousand-dollar bond would be sufficient, and in No. 6734-A a six-thousand-dollar bond.

Mr. Paul: That is satisfactory.

Mr. Robertson: Very well.

Thereafter on the 27th day of July, 1954, court having convened at 10:00 o'clock a.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; the applicant appearing by William L. Paul, Jr., its attorney; the objectors not appearing; the following proceedings were had:

Mr. Paul: Now, with respect to the two Yakutat cases, No. 6581-A and No. 6734-A, I notice Mr. Robertson's motion for [56] a new trial in both were for 10:00 o'clock yesterday morning but because of the absence of the Court they were not heard.

The Court: I didn't know there was anything left in those cases.

Mr. Paul: Mr. Robertson informs me that his argument will be very short. I have agreed with him on the telephone to his date of 2:00 p.m., Wednesday. Would that be satisfactory with the Court?

The Court: That is tomorrow?

Mr. Paul: Yes.

The Court: Yes; that will be satisfactory.

Mr. Paul: Thank you. I will inform him.

Thereafter on the 28th day of July, 1954, court having convened at 2:00 o'clock p.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; the applicant appearing by William L. Paul, Jr., its attorney; the objectors appearing by R. E. Robertson, their attorney; the following proceedings were had:

The Clerk: The motion for new trial in the two Yakutat cases, No. 6581-A and No. 6734-A.

Mr. Robertson: Also with Mr. Paul's consent, your Honor, in No. 6581-A the objectors have a motion to amend the minute order of June 29, 1954, so to show that the objections which were stated in their motion of June 23, 1954, to strike applicant's amended duplicate delinquent tax roll for 1949, [57] dated June 23, 1954, were correct in fact but that the City doesn't admit either my legal conclusions in the objections or the validity of the objections, and Mr. Paul says he is agreeable to that minute order being so entered.

Mr. Paul: I am agreeable, your Honor.

The Court: Well, if you agree on it, the minute order may be amended accordingly.

Mr. Robertson: Now, your Honor, I can't see why we can't submit the motions in each of these two cases for new trial at one time. I don't see any necessity of arguing them differently. I admit—I know how expensive these appeals are, and I wish I thought I had some—could persuade your Honor that the grounds of my motions for new trial are correct, but I have nothing new to argue which I haven't heretofore submitted to your Honor either

orally or by brief, and without limiting myself in any manner I simply again state to your Honor, and your Honor in your very brief opinion or memorandum decision in No. 6734-A stated that the objectors' substantial rights were not affected, and I would like to again emphasize, as I say, without limiting or releasing or discharging my other objections, but I submit, your Honor, that on a special proceedings that a taxpayer's substantial rights are injured when the statutory provisions of such statute in such special proceedings are not followed, and with that I submit the motions, your [58] Honor.

The Court: Well, I don't know that I can tell—what statutory provision is it that you say was not complied with?

Mr. Robertson: Well, they appear in all my objections, your Honor, and Mr. Paul himself made up the supplemental—or what did he call it—the amended, supplemental, delinquent tax roll for 1950 and 1951. I claim there is no such statute at all, if my objections are correct. I contend, your Honor, it is very unfortunate that the City hasn't complied with this statute in any respect in either of these two cases, and I think I have reiterated that to your Honor so many times I realize your Honor is probably sick of hearing me tell about it, and of course I go right back to the original, one of the original bases of our objections in the 1948-1949 tax proceedings, that there was never any assessment made at all, never any assessment made since 1948 of any

kind, and I just simply have to stand, your Honor, on my—I just want to again emphasize that, your Honor, to show you my good faith in constantly bringing these things up before the Court.

The Court: Well, of course I can't see why you do it, because, no matter how many times you win, you are eventually going to be defeated.

Mr. Robertson: I don't think so, your Honor.

The Court: Well, you certainly are.

Mr. Robertson: I think your Honor made a serious [59] error there, your Honor.

The Court: So far as assessments are concerned, if that is a typical objection, it seems to be fairly well settled that the City doesn't have to go through the same procedure as in the case of an initial assessment, that they can adopt the assessments made from the first year with such changes as have occurred in the town, and so, if that is illustrative of the other point, why, I can't be influenced much by that point or the other.

Now, I know there have been a lot of irregularities here. There naturally would be. I never thought that Yakutat—I had grave doubts whether Yakutat could ever function as a municipality. The only reason that I allowed Yakutat to become incorporated was because of the failure of the Department of Justice to station a deputy marshal there, and they failed for ten or twelve years, and the people just appealed to me to allow them to incorporate to see if they couldn't bring about some order out of chaos there. I always was very much in doubt whether they could function as a municipality, and it seems

that they are having great difficulty, if perhaps they have not failed in incorporating. But, when you have a municipality of that kind, so-organized, it is bound to follow that they are not going to do any more than substantially comply with even what may be essential and jurisdictional. Have you anything to add? [60]

Mr. Paul: I think your Honor has ruled on these points already. I do want to assure the Court that Yakutat is running its schools up there, paying its bills, saving the Federal Government a great deal of money in that regard, and I think they are doing a good job.

The Court: Well, Mahoney is the one responsible for cutting out the marshal in Yakutat, Hoonah and Craig, and I have had nothing but trouble since. It was a very shortsighted policy in trying to economize on law enforcement. I have no patience with it. I don't know how anything could be more grievously wrong.

Mr. Paul: Yakutat has suffered in that regard. Still, the people, as far as they are concerned, have done the best they can for themselves with their own resources.

The Court: Well, in view of the fact that the motions for a new trial apparently present nothing new, they are denied.

Mr. Robertson: Your Honor, we agreed sometime ago that in No. 6581-A that the supersedeas bond could be four thousand dollars and in No. 6734-A six thousand dollars, and that, I presume,

was satisfactory both as to the supersedeas and the costs.

Mr. Paul: Yes. The supersedeas includes the costs.

The Court: Well, the record will so show.

Mr. Paul: May it please the Court, I notice [61] in looking over the official file, while the Court has indicated that the order of sale was signed on June 29, 1954, as a fact of the matter, the order has not actually been signed. Would your Honor please sign it now?

The Court: You mean it hasn't been signed yet?

Mr. Paul: No. At least I see a form of order of sale in there that has not been signed. Now, I might be in error but——

The Court: That is in which case?

Mr. Paul: In both cases, I think, your Honor. However, I can assist the Clerk in checking up on that.

Now, we have one further matter in these cases. I have submitted to the Court, and it is in the official file, a form of order of withdrawal of documents deposited with the Clerk. These consist of all the City's official records. I should like to have that signed so that the City can have its records back for purposes of operating its business. I have informed counsel of this and delivered him a form of the order. If counsel desires to examine the records at any future date, they will be available.

The Court: Is there any objection to that?

Mr. Robertson: Just so that in the event that I think it should become necessary in any manner to have these original records in connection with the appeal that the City will send them back over to the custody of the Clerk if I [62] request it.

Mr. Paul: We agree.

The Court: Well, that will be a matter of record here, his promise to do that.

Mr. Robertson: Very well.

Thereafter on the 30th day of July, 1954, court having convened at 10:00 o'clock a.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; the applicant appearing by William L. Paul, Jr., its attorney; the objectors appearing by R. E. Robertson, their attorney; the following proceedings were had:

Mr. Robertson: In No. 6581-A, In the Matter of the Delinquent Tax Roll of the City of Yakutat, and also in No. 6734-A, In the Matter of the Delinquent Tax Roll of the City of Yakutat, I have served and filed notice of appeal, your Honor, and present my supersedeas, the one for four thousand dollars and the other for six thousand dollars, and I have submitted them to Mr. Paul.

Mr. Paul: We have no objection to the form of the supersedeas bonds, your Honor.

The Court: And the sufficiency?

Mr. Paul: U.S.F. & G.?

The Court: It has to be both as to the form and the sufficiency.

Mr. Paul: We agree that the U.S.F. & G. is adequate. [63]

(End of Record.)

United States of America,
Territory of Alaska—ss.

I, Mildred K. Maynard, Official Court Reporter for the hereinabove entitled Court, do hereby certify?

That as such Official Court Reporter I reported the above-entitled cause, viz. In the Matter of the Delinquent Tax Roll of Real and Personal Property for the City of Yakutat, Alaska, for the Years 1948 and 1949, No. 6581-A of the files of said court;

That I reported said cause in shorthand and myself transcribed said shorthand notes and reduced the same to typewriting;

That the foregoing pages numbered 1 to 63, both inclusive, contain a full, true and correct transcript of all the foregoing proceedings on the dates herein mentioned in the above-entitled cause, to the best of my ability.

Witness, my signature this 2nd day of October, 1954.

/s/ MILDRED K. MAYNARD,
Official Court Reporter.

[Endorsed]: October 2, 1954. [64]

[Title of District Court and Cause.]

DOCKET ENTRIES

Jan. 3, 1952—Application filed.

Jan. 8, 1952—Objections of Libby, McNeill & Libby and Yakutat & Southern Railway filed.

Jan. 8, 1952—Amendatory Objections of Libby, McNeill & Libby and Yakutat & Southern Railway filed.

Jan. 11, 1952—Affidavit of City Clerk filed.

Jan. 18, 1952—Further Amendatory and Supplementary Objections of Libby, McNeill & Libby and Yakutat & Southern Railway filed.

Jan. 18, 1952 M/O—Hearing on application for Order to sell property for delinquent taxes—under advisement.

Jan. 18, 1952—Two plats showing Eastern boundary of the City of Yakutat were filed with Court for its information.

Jan. 30, 1952—Applicant's Brief filed.

Feb. 1, 1952—Notice of Hearing filed.

Feb. 1, 1952 M/O—Court ruled that the Objections of Libby, etc., were overruled (see Minute Order, Feb. 2nd).

Feb. 6, 1952—Objection to Findings and Conclusions filed.

Feb. 18, 1952—Applicant's Brief filed.

Feb. 18, 1952—Robertson mailed Brief to Anchorage Feb. 16.

Feb. 21, 1952—Affidavit & Affidavit of Andrew J. Humphrey filed.

Feb. 21, 1952—Affidavits in support of Petition for rehearing of objections filed.

Feb. 21, 1952—Motion to Strike filed.

March 6, 1952—Court's Opinion filed.

Feb. 29, 1952 At Anchorage M/O—Court denied Petition for rehearing.

March 14, 1952—Cost Bills filed.

April 25, 1952 M/O—Upon hearing of signing Findings, Conclusions and Judgment court took matter under advisement.

April 26, 1952 M/O—Court signed Findings of Fact, Conclusions of Law and Order of Sale behalf of City of Yakutat.

April 26, 1952—Order of Sale filed and entered.

April 26, 1952—Findings, Conclusions filed.

April 26, 1952 M/O—Upon request counsel for Objectors—supersedeas Bond set at \$3,500.00. No attorney fee allowed.

April 28, 1952—Objectors' Objections to cost requested by applicant filed.

April 28, 1952—Notice of Appeal to Court of Appeals under Rule 73(b) filed.

April 30, 1952—Notice and Supersedeas on Appeal filed.

April 30, 1952 M/O—Court signed "Approved and appeal & Order of sale stayed this 30th day of April, 1952.

May 1, 1952—Objectors' Petition filed.

May 16, 1952 M/O—Order signed Order granting Libby, McNeill, etc., extending time in which to docket appeal in U. S. Court of Appeals to and including July 15, 1952. Order filed and entered.

June 26, 1952—Designation of Record on Appeal filed.

June 26, 1952—Statement of Points filed.

July 10, 1952—File sent to Circuit Court of Appeals.

Oct. 8, 1952—Motion to file Mandate and for Judgment on Mandate.

Jan. 8, 1952—Court approved Mandate from Court of Appeals and ordered spread at length on records of this court—same filed and entered.

May 6, 1954—Objection to Form of Judgment filed.

May 7, 1954 M/O—Objections to form of Judgment on Mandate overruled. Judgment signed.

May 7, 1954—Judgment filed and entered.

May 10, 1954—Motion for trial filed (Plaintiff's).

May 11, 1954 M/O—After hearing on above motion court advised counsel to present order for notice and then set case for trial.

May 12, 1954—Applicant's Motion to Strike filed.

May 12, 1954 M/O—Court Signed Order shortening time to hear motion and set matter for June 24, 1954.

May 12, 1954—Order filed and entered.

May 13, 1954 M/O—Upon presentation Court signed Order denying applicant's objections to Judgment. Order filed and entered.

May 21, 1954—Objectors' objections to Notice, etc., filed.

May 25, 1954—Deposition of Dorothy Henry filed.

May 28, 1954—Notice of filing Deposition of Dorothy Henry filed.

May 28, 1954—Objectors' Motion to Vacate Order entitled Order Shortening time filed.

May 28, 1954—Order to Suppress Deposition of Dorothy Henry filed.

May 28, 1954—Objectors' Objections to Applicant's Motion dated May 12, to strike portions of printed appeal record filed.

May 29, 1954—Objectors' Amended Notice of Presentation of Motions to vacate Order "Order shortening time" filed.

June 1, 1954—Affidavit of service of Amended Notice filed.

June 4, 1954—Certified copy.

June 4, 1954—Objectors' Second Amended Notice of Motion to vacate order entitled "Order shortening time, etc."

June 5, 1954—Affidavit of Service of 2nd Amended Complaint filed.

June 7, 1954—Applicant's Consent to hearing at Anchorage & Brief filed.

June 8, 1954—Reporter's Transcript of Extract of Proceedings filed.

June 8, 1954—Reporter's Transcript of Proceedings May 11, 1954, filed.

June 8, 1954—Case file sent to Anchorage to Judge.

June 21, 1954—Objectors' demand for Production of Record-Tax Rolls, etc., filed.

June 21, 1954—Files numbered 1 through 11, inclusive, filed. Response to Demand for Production of Record filed June 21, 1954.

June 22, 1954—Response and Objections to Demand filed.

June 23, 1954—Amended Supplemental Delinquent Tax Roll for 1949 filed.

June 24, 1954—Motion to Strike Amended Supplemental Delinquent Tax Roll for 1949 filed.

June 24, 1954—Objectors' Renewal of Motions to vacate order shortening time—including Order setting proceedings for trial to suppress Dorothy Henry's Deposition.

June 24, 1954—Objections to taking Dorothy Henry's Deposition and Objections to Applicant's Motion to strike certain portions of printed record on appeal filed.

June 24, 1954 M/O—Hearing arguments on above motions. Court took matter under advisement.

June 25, 1954—Court's memo decision filed. Several motions of objectors should be denied and that application for an Order of Sale of the Objectors' property should be granted.

June 28, 1954—Objectors' objections to Order of Sale filed.

June 29, 1954 M/O—Hearing on objectors' objections to Order of Sale—following which Court signed Order of Sale—it was stipulated that the amount of the supersedeas Bond be fixed at \$4,000.00.

June 29, 1954—Above Order filed and entered.

June 30, 1954—Reporter's Transcript of Proceedings of June 11, 1954 filed.

July 1, 1954—Deft's motion to amend or alter minute Order filed.

July 2, 1954—Motion for new trial filed.

July 6, 1954—Affidavit of Service by Mail filed.

July 15, 1954—Applicant's Notice of Attorney's Claim of Lien filed.

July 21, 1954—Notice of Hearing by applicant on Objectors' Motion for new trial filed.

July 27, 1954 M/O—Hearing on Motion for new trial in above July 27, 1954 Case set for 2 p.m., Wednesday, July 28th.

July 28, 1954 M/O—Objectors' Motion to amend M/O of June 30, 1954 filed.

July 28, 1954—Objectors' Motion for new trial denied.

July 30, 1954—Notice of Appeal to U. S. Court of Appeals for 9th Circuit under Rule 73(b) filed.

July 30, 1954—Supersedeas on Appeal filed.

July 30, 1954 M/O—Court approved and appeal allowed. Order of sale stayed this 30th day of July.

July 30, 1954—Order filed and entered.

Sept. 3, 1954—Order extending time to docket Appeal filed.

Aug. 31, 1954—Court signed Order extending time for filing appeal until Oct. 10, 1954.

Aug. 31, 1954—Order extending time to file and docket appeal filed and entered.

Oct. 2, 1954—Reporter's Transcript filed.

Oct. 4, 1954—Praecipe for Appeal Record filed.

Oct. 6, 1954—Motion for Order extending time to file and docket appeal filed.

Oct. 6, 1954 M/O—Upon consideration of above the Court signed Order.

Oct. 6, 1954—Order extending Time to file and Docket Appeal filed and entered.

[Title of District Court and Cause.]

United States of America,
Territory of Alaska,
Division Number One—ss.

CLERK'S CERTIFICATE

I, J. W. Leivers, Clerk of the District Court for the Territory of Alaska, First Division thereof, do hereby certify that the hereto-attached pleadings are the original pleadings and Orders of the Court filed in the above-entitled cause and are the ones designated by the parties hereto to constitute the record on appeal herein.

In Witness Whereof, I have hereunto set my hand and caused the seal of the above-entitled court to be affixed at Juneau, Alaska, this 21st day of October, 1954.

J. W. LEIVERS,

Clerk of the District Court.

By /s/ P. D. E. McIVER,

Chief Deputy Clerk.

[Endorsed]: No. 14562. United States Court of Appeals for the Ninth Circuit. Libby, McNeill & Libby, a corporation and Yakutat & Southern Railway, a corporation, Appellant, vs. The City of Yakutat, Alaska, Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, Division Number One.

Filed October 25, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 14,562

LIBBY, McNEILL & LIBBY, a Corporation, and
YAKUTAT & SOUTHERN RAILWAY, a
Corporation,

Appellants,

vs.

CITY OF YAKUTAT, ALASKA,

Appellee.

APPELLANTS' STATEMENT OF POINTS

1. The trial Court did not give Appellants a fair, impartial trial or hearing and did not accord them due process of law or a fair opportunity to present their case as stated in their written Objections, dated September 25, 1951; January 8, 1952, and January 17, 1952, or otherwise, and, notwithstanding it found that the Applicant had committed irregularities in the proceedings (Minute Order of April 26, 1952, Journal 20, p. 419), based the entry of its Order of Sale, Findings of Fact, and Conclusions of Law, solely, as Appellants contend, upon the ex parte Application, with its attached notices and proof of publication thereof, and the verified affidavit of City Clerk Williams, dated January 7, 1952, and refused to and did not consider the verified affidavits, offered by Appellants, of Andrew J. Humphrey, dated February 13, 1952, and of Andrew J. Humphrey and Earl J. Fleming, dated February 13, 1952, and did not allow Appellants,

or afford them a fair opportunity, to adduce any evidence whatsoever, and did not consider, or, if it did it did so without Appellants' knowledge, give proper or any consideration or weight to the evidence that had been adduced between the same parties in cause No. 6302-A, which evidence and said Humphrey and Fleming affidavits conclusively showed that no assessment was ever made of Appellants' properties or city tax assessor appointed for the tax year commencing June 1, 1949, and that the full and true value of all of their properties for that tax year was \$137,500.00.

2. The trial Court, notwithstanding no assessment was ever made, nor did the Applicant appoint a tax assessor, for the tax year commencing June 1, 1949, by its Order of Sale and Findings of Fact and Conclusions of Law, in effect found, without being based upon any competent or sufficient evidence, that Appellants' properties were of a tax assessment valuation of \$283,630.00, notwithstanding their true and full value was \$137,500.00.

3. The trial Court in effect unlawfully appointed and constituted itself the assessor for the Applicant for the tax year commencing June 1, 1949, and assessed Appellants' properties at \$283,630.00.

4. The trial Court erroneously overruled Appellants' objections, dated January 17, 1952, notwithstanding those Objections were true and valid.

5. The trial Court entirely ignored Appellants'

objections, dated September 25, 1951, and January 8, 1952, and erroneously overruled them as well as Appellants' objections, dated January 17, 1952, notwithstanding Appellants offered to prove them and could have proved them as shown by the verified affidavits of Andrew J. Humphrey, dated February 13, 1952, and of Andrew J. Humphrey and Earl J. Fleming, dated February 13, 1952, and the evidence adduced in cause No. 6302-A.

6. The trial Court erroneously rejected all of Appellants' proposed Findings of Fact and Conclusions of Law, notwithstanding Appellants' Objections, dated September 25, 1951; January 8, 1952, and January 17, 1952, as well as notwithstanding Appellants' Objections, dated February 6, 1952, to Applicant's Proposed Findings, Conclusions and Order of Sale, and further notwithstanding Appellants could and would have proved and, if the Court considered the evidence adduced in Cause No. 6302-A, did prove that their said Findings of Fact and Conclusions of Law were properly allowable under that evidence, and, notwithstanding that such proof could have been made was also shown by said affidavits of Andrew J. Humphrey, dated February 13, 1952, and of Andrew J. Humphrey and Earl J. Fleming, dated February 13, 1952.

7. The trial Court erroneously applied in this proceedings the procedure provided by Sections 16-1-121 to 16-1-130, ACLA 1949, to both real and personal property, notwithstanding that procedure

is not applicable to personalty and notwithstanding that no means exist of segregating realty from personalty or vice versa, for sale or other purposes in this proceedings.

8. The trial Court erred in holding that assessment in a lump sum could be validly made of Appellants' separate properties, without segregation of ownership or of realty from personalty.

9. There was no competent or sufficient evidence upon which to base the Court's finding, viz.: "The assessment and levy of the said taxes, penalty and interest and costs and the fact that the same are unpaid was regular and legal as well as all proceedings subsequent thereto to the extent of not affecting the substantial rights of the objectors," and said finding is clearly erroneous because of no evidence upon which to base it.

10. There was no competent or sufficient evidence upon which to base the Court's finding, viz.: "The assessment on said property was fairly made and equalized according to law, the taxes, penalty and interest and costs duly levied and not paid when due and due notice given of this hearing as provided by law, at least to the extent as not to affect the substantial rights of the objectors," and said finding is clearly erroneous because of no evidence upon which to base it.

11. There was no competent or sufficient evidence upon which to base the Court's finding, viz.: "The said taxes, costs, interest and penalties consti-

tute a lien against the respective property mentioned and set forth in said duplicate delinquent tax roll," and said finding is clearly erroneous because of no evidence upon which to base it.

12. The tax assessment for the tax year commencing June 1, 1949, was neither fairly made nor equalized according to law; in fact, no assessment was made.

13. The tax for the year commencing June 1, 1949, was not duly levied; in fact, no tax was levied.

14. The trustees for Applicant, as required by Section 16-1-122, ACLA 1949, or otherwise, did not designate the officer who should give the notice upon which its Application herein is based, direct the publication of that notice, designate the newspaper in which that notice should be published, or do or perform, as a board of trustees, those or any other requirements of said Section, nor did they cause said notice to be published once a week for four successive weeks ending not less than 30 days prior to the date on which the notice stated said Application would be presented.

15. The judgment applied as a credit upon Appellee's claimed taxes at its claimed valuations the \$719.94 costs allowed against Appellee by this Honorable Court in its Mandate of August 19, 1953.

16. The judgment or order of sale is based upon a purported duplicate delinquent tax roll which was prepared by Appellee's attorney and in entire dis-

regard of Sections 16-1-121 through 16-1-126, ACLA 1949, and the municipal ordinances.

17. The rule of law laid down by this Honorable Court in this cause, announced in its written Opinion of July 17, 1953 (reported 206 F. 2d 612), which Opinion and this Honorable Court's Mandate, issued in accordance therewith on August 19, 1953, are res judicata herein and the law of this cause.

18. The preponderance of the evidence proved that Appellants' properties were overvalued and overassessed for each of the tax years 1948 and 1949 and were of the true and full value during those two years as claimed by Appellants, and for neither of those years were the taxes on Appellants' properties fairly assessed or equalized.

19. Appellee did not prove, nor did the trial Court require Appellee to prove, that it had done any of the jurisdictional acts required in these special proceedings by Sections 16-1-121 through 16-1-126, ACLA 1949, in that Appellee's trustees did not officially designate the city assessor or other official to give the notice required by Section 16-1-122, officially direct either the publishing or posting of that notice, officially designate the place where or the date when the application would be made, or officially designate the dates and period either of publishing or posting that notice.

20. Notice of presentation of the duplicate delinquent tax roll was neither published nor posted

as required by either the law or the municipal ordinances.

21. The judgment allowed interest upon penalty, notwithstanding the municipal ordinances did not require or provide for the payment of interest upon penalty.

22. The duplicate delinquent tax roll, Exhibit 1, did not segregate taxes upon personalty from those upon realty or segregate the ownership of either personalty or realty, and affords no means of computing taxes upon the two classes of property or as to the two different ownerships.

23. Aliunde evidence admitted, i.e.: Dorothy Henry's deposition and page 5 of purported assessment book, Exhibit 2, to modify, amend, and alter the duplicate delinquent tax roll, Exhibit 1.

24. Computation of segregated taxes upon personalty and realty was based upon aliunde evidence, i.e.: Dorothy Henry's deposition and page 5 of purported assessment book, Exhibit 2, not upon the duplicate delinquent tax roll, Exhibit 1.

25. The judgment allowed an attorney's fee contrary to law.

26. Payments made by the respective Appellants in full of their respective taxes at the true and full value thereof, which payments were received, retained, and not returned by Appellee, were applied contrary to Appellants' instructions which accompanied the payments in such manner as to satisfy

the personal property taxes at Appellee's claimed valuations and to leave unsatisfied the real property taxes at Appellee's claimed valuations.

Dated at Juneau, Alaska, October 22, 1954.

/s/ R. E. ROBERTSON,

Of Attorneys for Appellants.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 25, 1954.

[Title of Court of Appeals and Cause.]

DESIGNATION OF CONTENTS
OF RECORD ON APPEAL

Appellants hereby designate for inclusion in the record herein the District Court's complete record as appearing in the Printed Record heretofore before this Honorable Court and upon which it based its Opinion of July 18, 1953, without reprinting of that record if such is permissible under this Honorable Court's rulings, and still can be considered upon the Appeal, and all proceedings in the District Court subsequent to this Honorable Court's issuing its Mandate on August 19, 1953, including the Reporter's complete transcript of October 2, 1954, all exhibits, all minute orders, all docket entries, also Reporter's transcript entitled in Cause No. 6734-A and dated June 4, 1954, but omitting duplication

of Reporter's transcript of June 11, 1954, omitting Appellee's undated and undesignated memo of authorities, Notice of Attorney's claim of lien, Affidavit in Support of Motion to Suppress Resolution and Resolution, Order permitting withdrawal of Exhibits, and Praecipe filed in District Court for Appeal Record.

Dated at Juneau, Alaska, October 22, 1954.

/s/ R. E. ROBERTSON,

Of Attorneys for Appellants.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 25, 1954.

